

3.2

SENSITIVE DATA * * *

PAGE: 2
DATE: 09/10/97

v.6.4.0 * * *
IL REGION IMPLEMENTER

COMPREHENSIVE CONSENT DECREE AND FINAL ORDER TRACKING REPORT

Illinois Database

ALL HANDLERS Universe

STATE OF IL Handler Universes calculated 09/03/97, 20.41.4 Enforcement Date: 10/01/85 to 09/10/97

ABBOTT LABORATORIES, ILD055409940 - CONTINUED

Narrative Comments:

TSD

RESPONDENT: LAEL F. JOHNSON

ADDRESS: 1401 SHERIDAN RD., NORTH CHICAGO, IL 60064

ORC CONTACT: SOLID WASTE & EMERGENCY RESPONSE BRANCH SECRETARY

(CM-29A)

SEP IS 3-PHASES, AS IDENTIFIED IN JANUARY 10, 1995 LETTER TO EPA.

I.D. #: ILD005125836

Docket #: V-W-84-R-071

Facility Name: AERO PLATING WORKS

Facility Location: 1860 N ELSTON CHICAGO, IL 60622

Eval/Enf Reference #: 002E Enforcement Action Type: 310 Enf. Action Date: 02/13/1986

Resp. Person: ~~R5RB~~ GO Resp. Branch: II Resp. Agency: EPA ORC Resp. Person: R5EM

Bill - Joe N4

Resp. Pers.	Event #	Description of Requirement	Coverage Area	Sched Date	Actual Date
IIRB	1	CIVIL PENALTY OF \$18,500 AGAIN	DGS	06/13/1986	
IIRB	2	ADDTL CIVIL PENALTY OF \$3,500	DGS	06/13/1986	
IIRB	3	CEASE ALL TSD OPERATIONS EXCEP	DOR	05/13/1986	10/17/86
IIRB	4	SUBMIT AN APPROVAL CLOSURE PLA	DCL	05/13/1986	07/25/88
IIRB	5	COMPLETE CLOSURE WITHIN 30 DAY	DCL	08/25/1988	
IIRB	6	IMMEDIATELY PREPARE MANIFEST F	DMR	05/13/1986	

Escalated to a Judicial Action

5/1/95

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LOUIS J. MAIORANO, et al.,

Defendants.

No. 87 C 4491

Judge ROVNER

SETTLEMENT AGREEMENT AND ORDER

This Agreement made this 1st day of April, 1995 by the United States of America, plaintiff and defendants, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. (hereinafter the Maioranos);

WITNESSETH THAT:

Whereas, as a result of the above-captioned federal district court case filed by the United States of America against the Maioranos wherein the United States of America received judgments in its favor on October 30, 1987 and January 8, 1990;

Whereas, the January 8, 1990 judgment in the amount of \$100,000.00 (One Hundred Thousand Dollars and no cents) was paid on May 1, 1991;

Whereas, the judgment of October 30, 1987 required the Maioranos to complete closure of the facility within 30 days of Illinois EPA approval of a closure plan;

Whereas, a facility closure plan has been approved by the Illinois EPA and such closure has been or will be undertaken by Seymour Shiner, the owner of the property;

Whereas, it is the desire of the parties hereto to resolve

all outstanding judgments and any further disputes in the above-entitled federal district court case:

THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Defendants shall deposit the sum of \$8,000.00 (Eight Thousand Dollars and no/cents) in an interest bearing escrow account by April 30, 1995 to be used solely as specified below. The establishment of the escrow account shall be documented to the United States Attorneys Office prior to the submission of this settlement agreement to the district court for approval and entry.

2. It is agreed and understood that the escrowed funds shall be used solely for paying necessary fees, costs and expenses for labor and materials necessary to accomplish closure in accordance with Illinois EPA requirements and with the judgment entered against defendants on October 30, 1987. Said fees, costs and expenses shall be evidenced by proper receipts and approved by a representative of Illinois EPA, prior to payments being made from the escrow account.

3. Upon approval and verification by Illinois EPA of closure and issuance of a certificate evidencing same, all proceeds of the escrow account shall be paid to the owner, Seymour Shiner, for the expenses that he has incurred in the closure.

4. Upon distribution of the proceeds of the escrow account in accordance with the preceding paragraphs, defendants' civil

liability under the judgments entered on October 30, 1987 and January 8, 1990 shall be deemed satisfied and paid in full.

5. This agreement shall be the total agreement between the parties hereto, is intended to resolve all matters in controversy relating to the above-entitled case and may only be modified in a writing signed by all parties or by order of the court.

6. The parties agree and acknowledge that final approval by the United States and entry of this Settlement Agreement and Order is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Settlement Agreement in the Federal Register, and an opportunity for public comment, and consideration of any comments. The United States reserves the right to withdraw its consent to this Settlement Agreement and Order should any public comments reveal facts or considerations indicating that the Settlement Agreement is inappropriate improper, or inadequate. Defendants consent to entry of the Settlement Agreement and Order without further notice.

Dated: SEP 15 1995

Entered:

Ann Claire Williams

United States District Judge


Through their undersigned representatives, the parties agree and consent to entry of the foregoing Settlement Agreement and Order in United States of America v. Maiorano, et al., 87 C 4491 (N.D. Ill.)

Defendants

Dated: May 1, 1995



LOUIS J. MAIORANO, SR.
Defendant



LOUIS J. MAIORANO, JR.
Defendant



Rodney Jacobs
Attorney of Louis Maiorano, Sr.

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Settlement Agreement and Order in United States of America v. Maiorano, et al., 87 C 4491 (N.D. Ill.)

Dated: 6/24/95

United States of America

L. J. Schiffer

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice

Daniel E. May 5-3-95

DANIEL E. MAY
Assistant United States Attorney
United States Attorneys Office
Northern District of Illinois

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Settlement Agreement and Order in United States of America v. Maiorano, et al., 87 C 4491 (N.D. Ill.)

Dated: 5-3-95

United States Environmental Protection Agency



JOHN BRESLIN
United States Environmental Protection Agency

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Settlement Agreement and Final Order in United States v. Maiorano, et al., 87 C 4491 (N.D. Ill.)

Dated: 7-3-95

United States Environmental Protection Agency

Mitchell D. Jordan

100 Valdas V. Adamkus
Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

JUL 25 1994

Daniel E. May
Assistant U.S. Attorney
Everett McKinley Dirksen Building
Room 1500 S
219 South Dearborn St.
Chicago, IL 60604

Re: U.S. v. Maiorano
Civil Action No. 87-C-4491

Dear Mr. May:

ACES Maintenance, the contractor employed by Mr. Seymour Shiner in his efforts toward closure of the former Aero Plating facility at 1850-1860 N. Elston in Chicago, has provided U.S. EPA with a cost estimate for such closure. As we have discussed, the closure plan submitted by Mr. Shiner has been approved by the Illinois EPA (IEPA letter, 5/23/94, enclosed). All that remained before the United States could proceed with its plan to approach Mr. Louis Maiorano (the owner and operator of the former plating operation) regarding his contribution toward closure costs was receipt of this cost estimate.

Mr. Dan Coyne of ACES states (see enclosed letter, 7/20/94) that costs to date associated with the closure total approximately \$19,000. Mr. Coyne estimates that it will cost \$44,000 to complete closure in accordance with the approved closure plan. The total estimated cost for closure of the facility, then, is \$63,000 (sixty-three thousand dollars).

I stated U.S. EPA's view for our proposed course of action against Mr. Maiorano in a September 30, 1993 letter to you (enclosed). In light of this, I suggest that we discuss this matter immediately, to formulate our direct approach toward Mr. Maiorano. He remains responsible for the closure of the facility. As far as I can gauge, Mr. Shiner is intending to complete the closure on his own. I believe that a major contribution to closure costs by Mr. Maiorano would not only

expedite final closure, but would be a more fair result concerning Mr. Shiner.

Please contact me at your earliest convenience to discuss this matter.

Sincerely,



John J. Breslin
Assistant Regional Counsel

cc: Deb Garber

Barbara Russell, HRE-8J
Steve Willey, DOJ

yellow

which location?

→ 1LD005125 & 36 0
04D 070 763 339 *MR*

Aero Plating Referral - Penalty Amount

Jim Rittenhouse
Enforcement Programs Unit #1

Ellen Carpenter, Assistant Regional Counsel
Office of Regional Counsel

After a review of the available information, I feel that the present closure cost information is too inadequate to be used in a BEN calculation for penalty imposition.

My suggestion is that, in accordance with the penalty policy, the figures first arrived at by Oliver Warnsley (and since amended through consultation with your office) will suffice for transmittal to the Department of Justice as a suggested penalty amount. The penalty computation worksheets are attached.

Attachment

5HE-12:JRITTENHOUSE:ea:7-1-87 RITTENHOUSE #3

	TYPIST	AUTHOR	OTHER STAFF	UNIT CHIEF	SECT. SEC'Y	SECT. CHIEF	INCH. CHIEF	WHD. DIR.
DATE	EA 7-1-87	<i>R</i> 7/1/87						



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN 4 1993

REPLY TO THE ATTENTION OF:

Greg Sanders
Illinois Environmental Protection Agency
Bureau of Land Pollution Control
2200 Churchill Road
Springfield, Illinois 62794

Re: Former Aero Plating Facility Closure Plan
1850-1860 N. Elston, Chicago

Dear Mr. Sanders:

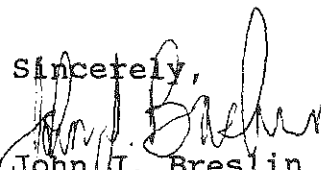
As I mentioned to you during our phone conversation today, it has been a laborious process attempting to arrive at closure of this facility. Let me explain briefly the status of this case from an administrative and legal perspective.

The operator of the former electroplating operation was Louis Maiorano Sr. (along with his son). The Maioranos failed to close the facility upon ceasing operations, and U.S. EPA began an enforcement action against them. When the Maioranos refused to comply with an administrative order, U.S. EPA referred the matter to the Department of Justice ("DOJ"). Judgments were obtained against the Maioranos in federal court requiring them to pay a penalty of \$100,000 and to complete closure of the facility. Mr. Maiorano was forced to pay the penalty upon selling his house when he discovered a lien which had been placed on the house by DOJ. The Maioranos submitted a closure plan to IEPA, which was approved on July 25, 1988. However, the Maioranos never certified that the site had been closed. U.S. EPA then referred another action to DOJ to hold the Maioranos in contempt of court.

Mr. Maiorano had some sampling done at the site in 1991. U.S. EPA contacted Seymour Shiner, the site owner, and informed him that he too was responsible for closure of the site. The closure plan submitted to you on November 12, 1992 is from Mr. Shiner's consultant, Dan Coyne of Aces Maintenance. U.S. EPA asked DOJ to withhold prosecution of the contempt action pending a determination of whether Mr. Shiner will complete closure of the facility. If the document submitted by Mr. Coyne is approvable, Mr. Shiner is apparently committed to proceed with closure. Otherwise, U.S. EPA will ask DOJ to proceed with the contempt action, and will consider enforcement against Mr. Shiner.

For these reasons, you can see why your review of the new closure plan is crucial to our attempt to resolve this matter. I appreciate your efforts towards our goal. Feel free to contact me with any questions regarding the site.

Sincerely,

A handwritten signature in dark ink, appearing to read "John J. Breslin". The signature is fluid and cursive, with the first name "John" and last name "Breslin" clearly distinguishable.

John J. Breslin
Assistant Regional Counsel

cc: Deborah Garber
Barbara Russell
Tom Moore, IEPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

RECEIVED

MAR 01 1991


U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

MAR 1 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: GAO Request for Penalty Calculation Data

FROM: Bruce M. Diamond, Director 
Office of Waste Programs Enforcement

TO: Waste Management Division Directors
Regions I-X

My office has received a data request from GAO on behalf of the Senate Committee on Governmental Affairs and the House Committee on Government Operations (copy attached). GAO is conducting a review of civil penalty practices across all media and has requested that we provide detailed information on each administrative and judicial enforcement case with a proposed monetary penalty that was "concluded" (settled) in FY1990.

Within the attached request you will find a matrix that identifies the various components to be included for each calculation. Please note that GAO is aware that these components are not an exhaustive accounting of all the considerations that go into the penalty determination. There are many adjustment factors (i.e., wilfulness, compliance history, etc.) that are considered during penalty development and negotiation. These adjustment factors will be addressed separately in the report.

The RCRA Administrative Action Tracking System shows that 126 final administrative orders, with penalty, were issued in FY1990. The largest number of orders that any one Region should have to account for is 39.

Because initial assessments in judicial cases are handled differently than in administrative cases, it is important that you work closely with your Office of Regional Counsel in providing this information. The Office of Enforcement will also be in touch with the Office of Regional Counsel regarding this matter.

Finally, you will note that GAO has also requested penalty reduction trend information for 1978 - 1990. We are developing a program here at Headquarters to provide that information. Anyone wishing to see the data for their Region prior to its release to GAO should contact Debbie Villari, Chief, Operations Management Section, RCRA Enforcement Division at (FTS) 475-7787.

GAO originally requested the data by March 5, 1991. We have negotiated an extension until March 12. To enable us to provide a consolidated analysis to GAO, please provide your responses to Debbie Villari no later than COB, March 8, 1991. Thank you for your assistance with this request.

Attachment

cc: RCRA Enforcement Section Chiefs, Regions I-X
RCRA Enforcement Branch Chiefs, Regions I-X
Office of Regional Counsel, Regions I-X
Kathie Stein
Susan Bromm



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 21 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: GAO Review of Civil Penalty Practices

FROM: Laurie J. May, Program Manager *Johnnie Webster*
for Organizational Enhancement

TO: Bruce Diamond, Director
Office of Waste Programs Enforcement

On December 6, 1990 and February 12, 1991 your staff met with representatives of the General Accounting Office (GAO) to discuss their overview of EPA's civil penalty practices. In order to carry out their analysis of how penalties are being implemented across programs and regions, GAO recently requested that we provide them with penalty data for FY90 which includes:

(1) The amount of the initial penalty assessment, (2) any subsequent recalculation of the economic benefit component and (3) the amount of the final assessed penalty. For penalty reduction trends in administrative cases, they would like the average and median reductions over the period FY 1978-90, presented by region.

We realize that it will take time to gather this information from various sources. However, in order to meet the revised GAO due date of ~~March 6, 1991~~, (the due date was previously February 28, 1991), we need to receive this information in my office no later than ~~March 5, 1991~~. Should you have any additional questions, please contact Charlene Dunn at 382-4510.

Attachment

cc: Johnnie Webster
Elaine Stanley
Steve Heare
Mark Pollins
Karen Leff
Debbie Villari
Henry Longest



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

February 5, 1991

Mr. Donald Clay
Assistant Administrator,
Office of Solid Waste and Emergency Response
Environmental Protection Agency

Dear Mr. Clay:

At the request of the Senate Committee on Governmental Affairs and the House Committee on Government Operations, we are looking at EPA's civil penalty practices. As you may recall, an overview of this review was transmitted to your office by memorandum from Steve Tiber, the GAO/EPA liaison, on November 27, 1990.

In order to carry out our analysis of how penalties are being implemented across programs and across regions, we are asking that your office provide us with the following data on federal civil penalties assessed in the RCRA program.

Data Set A. Penalty data for FY 1990.

For all enforcement cases with a proposed monetary penalty concluded during FY 1990, both administrative and civil judicial, please provide the following penalty data:

1. amount of initial penalty assessment;
 - a) amount of the gravity component;
 - b) amount of the economic benefit component;
2. any subsequent recalculation of the economic benefit component;
3. amount of the final assessed penalty.

Data Set B. Penalty Reduction Trends, Administrative cases.

We would like the average and median reductions over the period FY 1978-90, presented by region. Our review of the program's databases indicates that administrative penalty case information can be sorted by region and date, and includes initial penalty assessments and final assessed federal penalties for each penalty case.

In discussions with computer programmers familiar with the databases, we were informed that this information, including the average and median reductions, can be derived by downloading the data to PC format and carrying out the analyses using a spreadsheet program. Please provide us with a copy of any automated data files used to conduct these analyses. This will minimize, or eliminate, our need to make additional requests for data if we find that additional analyses are needed to support our review.

Sample spreadsheets have been attached for data sets A and B to demonstrate the type of data being requested and the desired presentation format. Please specify whether the data has been adjusted for inflation.

We realize that your office will need time to gather this data from various sources within the program. However, in order to meet our reporting deadlines, we will need to have the data by February 28.

Although we need the data as requested for analysis purposes, we will respect EPA guidelines on the publication of any information regarded as enforcement-sensitive.

Please send the information to Thomas Black, Evaluator, GAO Audit Site, Room M1002, Waterside Mall. If you or your staff have any questions regarding this request, please contact Mr. Black at (202) 252 0635.

We greatly appreciate your assistance in this matter.

Sincerely,

Bernice Steinhardt
Assistant Director
Environmental Protection Issues

cc: Pat Alberico

Data Set A: Format for penalty data on all enforcement cases with a proposed monetary penalty, concluded during FY 1990.

Please include entries for each case as follows:

Table 1. Administrative Penalty Cases Concluded in FY 1990.

	Initial Assessment			Settlement		
	Proposed Monetary Penalty	Amount Gravity Component	Level of Economic Benefit ¹	Final Calc. Economic Benefit ²	Environmentally Beneficial Expenditures ³	Final Monetary Penalty
Region						

Table 2. Civil Judicial Penalty Cases Concluded in FY 1990.

	Initial Assessment			Settlement		
	Proposed Monetary Penalty	Amount Gravity Component	Level of Economic Benefit	Final Calc. Economic Benefit	Environ. Beneficial Expenditures	Final Monetary Penalty
Region						

¹ As calculated using the BEN/ABLE Model.

² Include any subsequent recalculation of the economic benefit of noncompliance that is documented in the case file.

³ Include any environmentally beneficial expenditures that were accepted by EPA to mitigate the monetary penalty, if documented in the case file.

TOTAL P. 08

Penalty Reduction Trends in Administrative cases. For
please specify media and/or program.

Percentage Reduction of Administrative Penalties, by region, FY 1978 - 1990

1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990

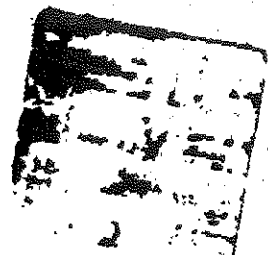


Table 2:

Median Percentage Reduction of Administrative Penalties, by region, FY 1978 - 1990

Region 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990

→ Paul / Amick / Ron Brown, REB

WFM
11/16/90

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

MEMORANDUM

SUBJECT: United States v Maioranos d/b/a Aero Plating Works
District Court Case # 87 C 4491

FROM: Rodger Field, Acting Chief
Solid Waste and Emergency Response Branch

TO: Bill Muno, Chief
RCRA Enforcement Branch

Ivars Antens, Chief
Financial Management Branch

This memorandum is to formally transmit a copy of the Judgment Order entered by the District Court for the Northern District of Illinois in the above-entitled case on January 8, 1990. The Court agreed that the government's recommended civil penalty of \$100,000, for failure to timely submit closure plans and for continued failure to respond to RCRA 3007 Information Requests, was appropriate. The Court, therefore, ordered the defendants Louis Maiorano, Sr. and Louis Maiorano, Jr. to pay that sum to the United States. Currently, the Collection Department of the United States Attorneys Office has been assigned the responsibility of collecting the Judgment.

Please contact me at 886-0556 or Elizabeth Murphy, Assistant Regional Counsel, at 886-0748 if you have any questions concerning this matter.

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Elizabeth Murphy 11/14/90
 [Name of contact person] [Date]
 in the Off. of Regional Counsel at 886-0748
 [office] [phone number]

☒ Non-SF Jud. Order/Consent Decree. USAO COLLECTS.

☐ Administrative Order/Consent Agreement
 FMO COLLECTS PAYMENT.

☐ SF Jud. Order/Consent Decree. FMO COLLECTS.

☐ This is an original debt

☐ This is a modification

Name of Person and/or Company/Municipality making the payment

The Total Dollar Amount of Receivable \$100,000.00
 (If in installments, attach sch. of amounts and respective due dates)

The Case Docket Number 87 C 4491

The Site-Specific Superfund (SF) Acct. Number (RCRA)

The Designated Regional/HQ Program Office Ron Brown - RCRA Enforcement Branch

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number

If you have any questions call:
 [Name of Contact] [Date]
 in the Financial Management Office, phone number:

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- | | |
|---|------------------------------|
| 1. Debt Tracking Officer | 2. Originating office (ORC) |
| Environmental Enforcement Section | 3. Designated Program Office |
| Department of Justice/Rm. 1647D | |
| P.O.Box 7611, Benjamin Franklin Station | |
| Washington, DC 20044 | |

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 4. Regional Counsel |

Wallace

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge or Magistrate	JUDGE ILANA D. ROVNER	Sitting Judge/ Mag. If Other Than Assigned Judge/ Mag.	
Case Number	87 C 4491	Date	Jan. 8, 1990
Case Title	USA v. MAIORANO, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

POSTED
JAN 09 1990
IN DOCKETING U.S. ATTORNEY'S OFFICE NORTHERN DISTRICT OF ILLINOIS

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) ☒ Judgment is entered as follows: (2) ☐ [Other docket entry.]

Government's motion for imposition of civil penalty is granted. A civil penalty of \$100,000 is imposed on defendants to be paid to the United States of America.

Ilana D. Rovner

(3) ☐ Filed motion of [use listing in "MOTION" box above]

(4) ☐ Brief in support of motion due _____

(5) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(6) ☐ Hearing on _____ set for _____ at _____

(7) ☐ Status hearing ☐ held ☐ continued to _____ set for _____ reset for _____ at _____

(8) ☐ Pretrial conference ☐ held ☐ continued to _____ set for _____ reset for _____ at _____

(9) ☐ Trial ☐ set for _____ reset for _____ at _____

(10) ☐ Bench trial ☐ Jury trial ☐ Hearing held and continued to _____ at _____

(11) ☐ This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to _____

☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)

(12) ☒ For further detail see ☐ order on the reverse of ☒ order attached to the original minute order form.)

<input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AD 410 form. <input type="checkbox"/> Copy to judge magistrate.	courtroom deputy's initials	Date/time received in central Clerk's Office	<div style="border: 1px solid black; padding: 5px;"> <i>Darius Wallace</i> JAN 9 1990 <i>[Signature]</i> JAN 9 1990 <i>[Signature]</i> </div>	number of motions date docketed clerking dpy. initials date mid. notices clerking dpy. initials	Document # <div style="font-size: 2em; font-weight: bold;">41</div>
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.	)	No. 87 C 4491
)	
LOUIS J. MAIORANO, SR. and	)	Hon. Ilana D. Rovner
LOUIS J. MAIORANO, JR. d/b/a)	
AERO PLATING WORKS, INC.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This case was brought by the United States for injunctive relief and civil penalties pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6928(a) and (g). The complaint alleged that defendants had violated an administrative order entered by the U.S. Environmental Protection Agency ("EPA"). On October 28, 1987, the Court granted the government's motion for partial judgment on the pleadings. The sole remaining issue is the government's request for imposition of a civil penalty.

II. FACTS

The defendants, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr., owned and operated an electroplating business called Aero Plating Works, Inc., until the mid 1980's. This business generated hazardous wastes. In September 1984,

following inspections by the Illinois Environmental Protection Agency ("IEPA"), the EPA issued an Administrative Complaint and Compliance Order to defendants alleging violations of federal and state hazardous waste laws and regulations. An administrative hearing was held in July 1985. On February 13, 1986, after finding numerous violations in connection with the storage and disposal of hazardous wastes, the administrative law judge issued an order requiring defendants to submit a closure plan for EPA approval, to complete closure within thirty days of EPA approval, and to comply with Illinois regulations concerning off-site transportation of hazardous wastes. The order also required Louis J. Maiorano, Jr. to pay a civil penalty of \$3,500 and held defendants jointly and severally liable for an additional civil penalty of \$18,500. Defendants did not appeal the order, which accordingly became final on April 13, 1986 pursuant to 40 C.F.R. §22.27(c).

On February 3, 1987, the EPA requested certain information from defendants concerning the facility pursuant to Section 3007 of the RCRA, 42 U.S.C. §6927. Defendants were required to respond in seven days but did not do so.¹ Defendants apparently complied with the EPA's information request on October 23, 1987.

Defendants failed to comply with any of the provisions of the EPA order or with the EPA information request. On May 18, 1987, the government filed this lawsuit seeking enforcement of

¹ See United States v. Charles George Trucking Co., 823 F.2d 685, 688-89 (1st Cir. 1987) (affirming civil penalty under RCRA for failure to respond to EPA information request).

the order and information request and the imposition of civil penalties.

On October 16, 1987, defendants finally submitted a closure plan to the IEPA. On December 10, 1987, the IEPA notified defendants that their submission was deficient and directed them to submit a revised plan within 30 days. Defendants requested an extension to February 5, 1988, and they did not submit a revised plan until June 9, 1988.

In the meantime, no lawful closure of the premises could occur without an approved closure plan. Nonetheless, the premises were being relet to new tenants. Upon discovering this, the government moved for partial summary judgment on the pleadings with respect to its request for injunctive relief. That motion was granted by this Court on October 28, 1987. Provision 7 of the Judgment Order required defendants to notify the new owner, tenants, and other persons at the facility of the potentially hazardous conditions. Among other things, defendants were required to post notices that the facility had "utilized hazardous materials and that it has not been shown that said facility was properly closed and that all hazardous wastes have been fully removed and properly disposed."

On December 23, 1987, the government notified defendants that they had not complied with Provision 7 or with Provisions 5 and 6, which ordered payment of the penalties set by the EPA. On January 22, 1988, defendants submitted to the EPA a copy of the notice which they had posted on the premises. It stated merely:

"CAUTION: A Plating Shop Once Occupied This Building.
10/29/87." Provision 7 also required written notification to certain identified persons, and defendants did not comply with this requirement until January 22, 1988.

Defendants also failed to satisfy the monetary judgment portion of the order. Accordingly, on March 1, 1988, the Clerk of Court issued a Citation in Supplemental Proceedings requiring defendants to appear on April 1, 1988 to be examined under oath concerning their property and income and to bring with them certain financial documents. As a result, the government and defendants agreed on a payment plan.

III. DETERMINATION OF PENALTY

Section 3008(g) of the RCRA provides:

Civil penalty -- Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

42 U.S.C. §6928(g). The government argues that the number of days of violation should be computed as follows:

<u>Violation</u>	<u>Dates of Violation</u>	<u>Days of Violation</u>
Failure to submit closure plan pursuant to EPA order	5/12/86-10/16/87	515
Failure to respond to EPA information request	2/20/87-10/23/87	270
Failure to submit revised closure plan	2/5/88-6/8/88	124
<hr/>		<hr/>
Total Days of Violation		909

Defendants have not objected to this computation, and the Court agrees that the maximum penalty should be determined on the basis of 909 days of violation. Multiplication of this number by the maximum daily fine of \$25,000 yields a maximum penalty of \$22,725,000.

The government argues that a substantial penalty is warranted for reasons of deterrence.² The Court agrees. In determining an appropriate penalty, the Court should consider the seriousness of the violation and the extent of any good faith efforts to comply. See United States v. T & S Brass and Bronze

² See United States v. T & S Brass and Bronze Works, Inc., 681 F.Supp. 314, 322 (D.S.C.) (the major purpose of a civil penalty is deterrence), aff'd in relevant part, 28 E.R.C. 1649, 19 Env't'l L. Rep. 20,857 (4th Cir. 1988). See also United States v. Environmental Waste Control, Inc., 710 F.Supp. 1172, 1244 (N.D. Ind. 1989).

Works, Inc., 681 F.Supp. 314, 322 (D.S.C.), aff'd in relevant part, 28 E.R.C. 1649, 19 Env't'l L. Rep. 20,857 (4th Cir. 1988). Defendants' violations were not minor; they were rather serious. Not only were their substantive violations extensive, as documented in the EPA order, but they disregarded specific orders as well, and there are few acts as serious as violations of orders once the facts have already been adjudicated. Defendants have not taken this matter seriously, and they have exhibited a pattern of behavior which evidences a complete disregard for statutory law, EPA orders, and judicial orders. To impose merely a perfunctory or token penalty would send a message to similarly situated persons that they may flout the law without consequence.

Defendants point to delays occasioned by the IEPA's failure to promptly respond to defendants' closure plans. However, there is no showing that the amount of time the IEPA took to review the plans was inordinate, and, in any event, those alleged delays cannot excuse defendants' own conduct.

Defendants also emphasize their own personal financial circumstances, apparently in the hope that their lack of affluence will influence the Court's determination of an appropriate penalty. Although the ability to pay may warrant consideration in some circumstances, the Court does not view it as a particularly significant factor in this case. Defendants have never provided evidence concerning their financial

circumstances, despite numerous opportunities to do so.³ Furthermore, defendants have been so intransigent that they are in no real position to request mercy based on their personal circumstances.

The government has suggested that a civil penalty of \$100,000--about \$110 per day--would be appropriate. Although this figure is a relatively small proportion of the maximum penalty, it is nonetheless a substantial sum, and it would serve the deterrence purposes of §3008(g) of the RCRA.⁴ The Court agrees that it is an appropriate penalty.

IV. CONCLUSION

A civil penalty of \$100,000 is hereby imposed on defendants, to be paid to the United States of America.

ENTER:


ILANA DIAMOND ROVNER
UNITED STATES DISTRICT JUDGE

DATED: January 8, 1990

³ The government has sought financial information from defendants as part of settlement negotiations (conducted both with and without this Court's assistance), and defendants' financial records were subject to disclosure through the Citation in Supplemental Proceedings.

⁴ This figure is considerably lower than penalties imposed in other RCRA cases. See Environmental Waste, supra, 710 F.Supp. at 1245 (imposing penalty of \$2,000 per day); T & S Brass, supra, 681 F.Supp. at 322 (imposing penalty of \$1,000 per day).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

22 JUN 1990

5-CS-TUB-7

Honorable Richard Stewart
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Ben Franklin Station
Post Office Box 7611
Washington, D.C. 20530

RE: Referral for Rule 70 Proceedings of the Federal Rules of Civil Procedure Against Louis Maiorano, Sr. and Louis Maiorano, Jr. for Failure to Comply with Judgment Order, United States of America v. Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. d/b/a Aero Plating Works, Inc., Civil Action No. 87 C 4491, United States District Court for the Northern District of Illinois.

Dear Mr. Stewart:

By this letter, I am requesting that the Department of Justice initiate contempt proceedings and seek an order for other appropriate relief pursuant to Rule 70, F.R.C.P. against Louis Maiorano, Sr. and Louis Maiorano, Jr. for their failure to comply with a judgment requiring, among other things, that they submit to the Illinois Environmental Protection Agency a certification of closure of the electroplating facility which they formerly owned and operated as Aero Plating Works, Inc. This action is necessary to complete closure of the facility and to enforce the judgment of the court.

I. Background Information

On May 18, 1987, the Department of Justice, on behalf of the United States Environmental Protection Agency (U.S. EPA) filed a civil action against Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. d/b/a Aero Plating Works, Inc. (Defendants). (Attachment A) The complaint alleged that Defendants had failed to comply with an order of an Administrative Law Judge which required them to submit an approvable closure plan for the Aero Plating Works facility, to complete closure in accordance with the approved plan, to comply with Illinois off-site disposal requirements for hazardous waste and to pay civil penalties. It further alleged that Defendants failed to comply with an

information request issued by U.S. EPA pursuant to Section 3007 of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6927. The relief sought by the complaint included injunctive relief in the form of compliance with the above-described order, payment of the administrative penalties assessed under the order, imposition of civil penalties for failure to comply with the order and for failure to comply with the U.S. EPA information request, and costs.

Upon discovery that the facility had been leased to new tenants, the United States moved the court for a partial judgment on the pleadings, specifically on its request for injunctive relief. On October 28, 1987, the court granted this motion and ordered, in part, that Defendants amend and resubmit for Illinois Environmental Protection Agency's (IEPA's) approval a previously submitted closure plan; within 30 days of approval, complete closure in accordance with the approved plan; and upon completion, submit a certification of closure to the IEPA. (Attachment B)

On July 25, 1988, conditional approval of the Defendants' closure plan was granted by IEPA. Under the terms of the approved closure plan, completion of closure was required by November 22, 1988 and certification of completion was to be submitted to IEPA within 60 days of completion, or by January 21, 1989.

Some confusion exists in the records of IEPA regarding subsequent events. It was thought that a certification of closure may have been logged into the IEPA records sometime in September 1988, but IEPA was unable to locate the certification itself. (Attachment C) When the owner/operator was unreachable for clarification of this matter by phone, IEPA issued a Compliance Inquiry Letter, soliciting submittal of the certification of closure. (Attachment D) This letter was sent on May 22, 1989 and requested response within 15 days of that date. No certification was received by IEPA in response to its compliance inquiry.

IEPA then issued, on July 12, 1989, a Pre-Enforcement Conference Letter to Louis Maiorano, Jr., notifying him of the potential for formal action being taken against him for his failure to submit a certification of closure. (Attachment E)

A facility inspection by IEPA followed. During that inspection, several areas of the facility in which waste had been observed in the past were inaccessible and therefore, the status of closure was uncertain. A report of this inspection, which was performed on November 6, 1989, accompanied by another notice of continued failure to submit a certification of closure, was sent to Louis Maiorano, Jr. on December 4, 1989. (Attachment F)

In an attempt to independently determine whether closure was ever implemented and whether a certification of closure was submitted, U.S. EPA contacted the consulting firm which had prepared the closure plan on behalf of the Maioranos. Based on that investigation, it appears that neither occurred. Currently, Defendants remain in noncompliance with the court's order of October 1987 for failure to submit certification of closure.

II. Cause of Action

Rule 70 of the Federal Rules of Civil Procedure provides, in pertinent part:

If a judgment directs a party ... to perform any ... specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party ... The court may also in proper cases adjudge the party in contempt.

The October 28, 1987 judgment directed the Maioranos to complete closure of the Aero Plating facility and to submit to IEPA certification of closure upon its completion. To date, after having been provided several notices of noncompliance and the threat of formal proceedings, there is no indication that the facility was ever properly closed, nor that a closure certification has been submitted by the Maioranos. Lacking the certification of closure, the facility retains its status as a RCRA treatment, storage and disposal facility, meaning that site inspections must be continued and resources must be directed toward that end. Additionally, and most importantly, hazardous waste which had been observed at the facility prior to its occupation by new tenants may still remain on site. It is imperative, then, that the defendants' violation of the Court's judgment be pursued.

III. Proposed Action

It is requested that the relief provided in Rule 70 of the Federal Rules of Civil Procedure be sought so that the court's order regarding closure can be enforced and the facility can finally, in fact, be closed in accordance with IEPA requirements. There is a potential difficulty in appointing another to complete closure, however, in that the imposition of costs on the "disobedient part[ies]" may prove troublesome.

Those aspects of the lawsuit which remained after the October 1987 order pertained to penalties. In January, 1990, the government's motion for imposition of a civil penalty was granted and the court ordered that Defendants pay a \$100,000 penalty to the United States.

Following that order, two Citations to Discover Assets, one for each of the Maioranos, were issued by the U.S. Attorney's Office. Only Louis Jr., however, was served. Louis Sr. was not located within the jurisdiction, but was reported to be vacationing in Florida for several months. Louis Jr.'s present assets are limited and unless his income improves, it is unlikely that he will be able to contribute to the \$100,000 penalty imposed upon him and his father. It is also unlikely, therefore, that he would be able to pay the costs of a person appointed by the court to close the facility.

An attempt at serving a second Citation to Discover Assets upon Louis Sr. is currently being considered according to the Collections Department of the U.S. Attorney's Office for the Northern District of Illinois. Louis Sr. did pay, in full, the penalty imposed in the October 1987 order, and is believed to have substantial assets. In the event that his assets can be discovered, the issue of assessing the costs of closure against him may not be an obstacle.

In addition to seeking appointment of a qualified consultant or engineer to perform the obligations of the defendants, it is requested that the Court be petitioned to adjudge Louis Maiorano, Sr. in contempt.

IV. Contacts

Regional contacts are Ron Brown, RCRA Enforcement Branch, at (FTS) 886 - 4463 and Elizabeth Murphy, Office of Regional Counsel, at (FTS) 886 - 0748. Ann Wallace of the United States Attorney's Office for the Northern District of Illinois represented the U.S. EPA in the earlier proceedings and her phone number is (FTS) 886 - 9082. Also in that office is Carol DeVillo, at (FTS) 353 - 7846, who has been involved in efforts to secure collection of the \$100,000 penalty.

Sincerely yours,



FOR Valdas V. Adamkus
Regional Administrator

RECEIVED

MAY 18 1987

H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT
UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

LOUIS J. MAIORANO, Sr. and
LOUIS J. MAIORANO, Jr. d/b/a
Aero Plating Works, Inc.,

Defendants.

Civil Action No.

JUDGE ROVNER

87 C 4491

MAGISTRATE WEISBERG

COMPLAINT

Plaintiff, the United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"), alleges the following:

1. This is a civil action for injunctive relief and for the imposition of civil penalties pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§6928(a) and (g), arising from defendants' failure to comply with (i) the requirements of RCRA for hazardous waste management facilities, (ii) an administrative order issued by U.S. EPA to defendants, and (iii) an information request issued by U.S. EPA to defendants pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

2. Specifically, the United States seeks an order requiring defendants Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. ("Defendants") to comply with an administrative

order and an information request issued by U.S. EPA to Defendants under RCRA. The United States also seeks civil penalties for Defendants' violations of the administrative order and the information request.

JURISDICTION, VENUE AND NOTICE

3. This court has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §§1331, 1345, and 1355. Pursuant to 42 U.S.C. §6928(a) and 28 U.S.C. §1391(b), venue is proper in this district because the violations occurred in this district and because Defendants' hazardous waste facility was located in this district.

4. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), the State of Illinois has been notified of the commencement of this action.

DEFENDANTS

5. Defendant Louis J. Maiorano, Sr. is an individual who owns the property on which an electroplating business known as Aero Plating Works, Inc. was conducted. Louis J. Maiorano, Sr. leased the property to Louis J. Maiorano, Jr. Louis J. Maiorano, Jr. is an individual who owned and operated Aero Plating Works, Inc., which was located at 1860 North Elston Avenue, Chicago, Illinois ("the Aero Plating facility"). Aero Plating Works, Inc. was an Illinois corporation involuntarily dissolved by the State of Illinois in 1980. Aero Plating Works, Inc. was reinstated as an Illinois corporation on August 31, 1984, and was again dissolved on May 1, 1986.

6. Operation of the Aero Plating facility resulted in the generation and storage of chromium (EPA Hazardous Waste No. D007), wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006), and spent stripping and cleaning bath solutions from electroplating operations in which cyanides are used in the process (EPA Hazardous Waste No. F009). These wastes are "hazardous wastes" within the meaning of Section 3001 of RCRA, 42 U.S.C. §6921, and 40 C.F.R. §§261.24 and 261.31.

7. Aero Plating Works, Inc. was a "generator" of, and a "treatment, storage, and disposal facility" for, hazardous wastes within the meaning of 40 C.F.R. §260.10.

8. Defendant Louis J. Maiorano, Sr. is an "owner" of the Aero Plating facility within the meaning of 40 C.F.R. §260.10.

9. Defendant Louis J. Maiorano, Jr. is an "owner" and "operator" of the Aero Plating facility within the meaning of 40 C.F.R. §260.10.

STATUTORY AND REGULATORY BACKGROUND

10. RCRA and its implementing regulations establish a comprehensive program for regulating the generation, treatment, storage, and disposal of hazardous waste. 42 U.S.C. §6902 and §6921 et seq. 40 C.F.R. Parts 260-271.

11. Section 3006 of RCRA, 42 U.S.C. §6926, provides that a State may obtain Federal authorization to administer the RCRA hazardous waste management program in that State. Pursuant

to Section 3006(c) of RCRA, 42 U.S.C. §6926(c), on May 17, 1982 EPA granted the State of Illinois interim authorization to administer and enforce a hazardous waste program in lieu of the federal program. The State of Illinois program is codified at 35 Ill. Adm. Code §703 et seq. and 35 Ill. Adm. Code §725 et seq.

12. Pursuant to Section 3008(a)(2), 42 U.S.C. §6928(a)(2), the United States is authorized, upon notification to the state, to enforce state regulations issued under authorized state programs.

13. Section 3005 of RCRA, 42 U.S.C. §6925, generally prohibits the operation of a hazardous waste facility except in accordance with a permit. Section 3005(e) of RCRA, 42 U.S.C. §6925(e), further provides that a hazardous waste facility which was in existence on November 19, 1980 may obtain "interim status" to continue operating until final action is taken by U.S. EPA with respect to its permit application, so long as the facility satisfies certain conditions specified in that section. Those conditions include filing a timely notice with U.S. EPA that the facility is treating, storing, or disposing of hazardous waste, and filing a timely application for a hazardous waste permit for those particular activities.

14. The owner or operator of a facility with interim status must comply with standards set forth in 40 C.F.R. Part 265 or equivalent state regulations.

15. 40 C.F.R. §265.1(b) provides that hazardous waste facilities that fail to take steps necessary to obtain interim

status are nonetheless subject to the regulations of 40 C.F.R. Part 265. The owner or operator of an Illinois hazardous waste facility which has not obtained a RCRA permit must comply with 40 C.F.R. Part 265, and, as of May 17, 1982, must comply with 35 Ill. Adm. Code Parts 703 and 725 et seq.

ENFORCEMENT HISTORY

16. On September 7, 1984, U.S. EPA issued to Defendants an Administrative Complaint and Compliance Order, Docket No. V-W-84-R-071, as authorized by Section 3008(a)(1) of RCRA, 42 U.S.C. §6928(a)(1). The Complaint and Compliance Order alleged that Defendants failed to comply with numerous hazardous waste permitting requirements pursuant to RCRA and federal and state regulations. The Complaint and Compliance Order required Defendants, inter alia, to submit an approvable closure plan for the Aero Plating facility, to complete closure in accordance with the approved plan, to comply with state requirements for off-site transportation of hazardous waste pursuant to 35 Ill. Adm. Code §§722.120(a), 722.130, 722.131, 722.132(b), and 722.133, and to pay civil penalties.

17. On July 30 and 31, 1985, an administrative hearing was held before Administrative Law Judge Gerald Harwood. On February 13, 1986, ALJ Harwood issued an Order (the "ALJ Order") requiring Louis J. Maiorano, Jr. to pay a civil penalty of \$3,500 and holding Defendants jointly and severally liable for an additional civil penalty of \$18,500. The ALJ Order further required Defendants, inter alia, to submit within thirty (30)

days a closure plan for U.S. EPA approval, to complete closure within thirty (30) days of such approval, and to comply with Illinois regulations regarding off-site transportation of hazardous waste.

18. The February 13, 1986 ALJ Order contained findings of fact regarding, inter alia, (a) Defendants' storage, after November 19, 1980, of hazardous waste at the Aero Plating facility for periods of longer than 90 days without a permit or interim status, (b) Defendants' leasing to new tenants a portion of the Aero Plating facility even though hazardous waste drums and other contaminants remained in the facility, and (c) Defendants' failure to submit an approvable closure plan to U.S. EPA and the Illinois Environmental Protection Agency.

19. On February 21, 1986, one provision of the February 13, 1986 ALJ Order, not at issue here, was modified. Pursuant to 40 C.F.R. §22.27(c), on April 13, 1986, the ALJ Order became a final decision of the Administrator of U.S. EPA ("the U.S. EPA Order"). A copy of the U.S. EPA Order is attached hereto as Exhibit 1 and incorporated by reference as if fully set forth. Defendants were notified that they had thirty (30) days from receipt of the U.S. EPA Order to comply with the provisions of the Order, and sixty (60) days to pay the assessed civil penalty.

20. Defendants have failed either to submit to U.S. EPA an approvable closure plan or to complete closure activities as required by the U.S. EPA Order and have failed to pay ordered civil penalties.

FIRST CLAIM FOR RELIEF

21. Paragraphs 1-20 above are incorporated herein by reference.

22. Defendants' actions constitute violations of the terms and conditions of a U.S. EPA Order, in violation of Section 3008(a) of RCRA, 42 U.S.C. §6928(a).

23. Pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§6928(a) and (g), Defendants as owners or owners and operators of the Aero Plating facility are liable for injunctive relief to prevent further violations of the U.S. EPA Order and for civil penalties of up to \$25,000 per day of violations.

24. Injunctive relief is necessary to assure that the Defendants will comply with the U.S. EPA Order, including the requirements applicable throughout the period of closure activity and the payment of the administrative penalty.

SECOND CLAIM FOR RELIEF

25. Paragraphs 1-20 above are incorporated herein by reference.

26. On February 3, 1987, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, U.S. EPA requested, by certified letter, that Defendants provide to U.S. EPA certain information concerning the Aero Plating facility. Defendants were given seven (7) days, from receipt of the letter, to respond to the request. A copy of the letter is attached hereto as Exhibit 2 and incorporated by reference as if fully set forth.

27. U.S. EPA issued the February 3, 1987 request for information in order to enforce the provisions of RCRA and the U.S. EPA Order.

28. As of the date of filing this complaint, Defendants have failed to comply with U.S. EPA's request for information. Unless enjoined by order of this Court, Defendants will continue to violate the information request.

29. Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), provides in pertinent part:

For purposes of . . . enforcing the provisions of this title, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator . . . furnish information relating to such wastes. . . .

30. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), Defendants are subject to injunctive relief and civil penalties not to exceed \$25,000 for each day of non-compliance with U.S. EPA's information request.

WHEREFORE, the United States respectfully requests that the Court:

1. Order Defendants to comply with the U.S. EPA Order;
2. Order Defendants to submit to U.S. EPA and Illinois EPA an approvable closure plan for the Aero Plating facility and to complete closure in accordance with such closure plan as approved by Illinois EPA;
3. Order Defendant Louis J. Maiorano, Jr. to pay the civil penalty of \$3,500 assessed under the U.S. EPA Order;
4. Order Defendants to pay the civil penalty of \$18,500 assessed under the U.S. EPA Order;
5. Assess civil penalties against Defendants of up to \$25,000 per day for each violation of the U.S. EPA Order;


6. Order Defendants to provide to U.S. EPA all information requested by U.S. EPA in its February 3, 1987 information request;

7. Assess civil penalties against Defendants of up to \$25,000 per day for non-compliance with the February 3, 1987 information request;

8. Award the United States its costs in this action;
and

9. Award such additional relief as the Court may deem appropriate.

Respectfully submitted,




F. HENRY HABICHT II
Assistant Attorney General
Land and Natural Resources Division
Washington, D.C. 20530

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United States Attorney
Northern District of Illinois

By:

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

LOUIS J. MAIORANO, Sr. and
LOUIS J. MAIORANO, Jr. d/b/a
Aero Plating Works, Inc.,

Defendants.

Civil Action No. 87 C 4491

Judge Rovner

JUDGMENT ORDER

This matter came on for hearing on October 28, 1987 before the Court, Honorable Ilana Diamond Rovner, District Judge presiding, the plaintiff United States having moved for entry of a partial judgment on the pleadings, and the Court having considered plaintiff's motion set forth hereafter, it is hereby:

ORDERED AND ADJUDGED

1. Defendants having ceased all treatment, storage, or disposal of hazardous waste at the premises formerly occupied by Aero Plating Works, Inc. (the facility), are hereby enjoined from undertaking such activities unless they comply with applicable law, including obtaining all necessary permits and approvals required by U.S. EPA and the State of Illinois EPA.

2. Defendants shall properly dispose of any and all hazardous waste which is present at the facility, by commencing the following activities, all of which shall be completed within

ten (10) days from the entry of this Judgment:

a. Prepare manifests prior to the off-site transportation of any hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).

b. Package such hazardous waste according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.130.

c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.131.

d. Prior to shipping such hazardous waste off-site, mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.
Manifest Document Number _____.

e. Offer the transportation placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

3. a. Defendants have submitted to the Illinois EPA and to the U.S. EPA a closure plan for the facility; that shall be amended to meet the standards for such plans contained

in 35 Ill. Adm. Code. § 725.210, as determined by the Illinois EPA, and which shall detail the activities to be accomplished and that have already been accomplished by the Defendants to remove and properly dispose of or otherwise handle the hazardous waste at the facility. If said plan is determined by the Illinois EPA to be inadequate, Defendants shall make any revisions required by the Illinois EPA and submit a revised closure plan within ten (10) days from the date that they are notified by Illinois EPA that the plan is inadequate and that copies thereof to be forthwith submitted to counsels for plaintiff.

b. Within 30 days of Illinois EPA approval of the closure plan, Defendants shall complete closure of the facility, in accordance with the approved closure plan and upon completion shall submit a certification of closure to the Illinois EPA, as required by 35 Ill. Adm. Code § 725.215.

4. Within 10 days of the entry of this Judgment Defendants shall provide the information requested by the U.S. EPA in its Information Request dated February 3, 1987, issued to the Defendants pursuant to § 3007 of the Resource Conservation and Recovery Act 42 U.S.C. 6927.

5. Judgment is hereby entered against the Defendants, jointly and severally, in the amount of eighteen thousand five hundred dollars (\$18,500), together with interest at the prevailing rate(s) as provided at 31 U.S.C. § 3717, commencing on April 28, 1986;

6. In addition, judgment is hereby entered against Defendant Louis J. Maiorano, Jr. in an additional amount of three thousand five hundred dollars (\$3,500) together with interest at the prevailing rate(s) as provided by 31 U.S.C. § 2717, commencing on April 28, 1986;

7. Defendants shall immediately undertake the following activities to protect human health:

a. Not later than October 28, 1987 they shall orally inform the present owner, tenant(s), occupant(s), contractor(s), and any other person on the premises which are the subject of this action that the facility which was formerly located at said premises utilized hazardous materials and that it has not been shown that said facility was properly closed and that all hazardous wastes have been fully removed and properly disposed.

b. Not later than October 29, 1987, they shall provide written notice of the above information to the persons specified above by certified mail, return receipt requested, or by personal delivery, and shall furnish a copy of said written notice to plaintiff's counsel.

c. Not later than October 29, 1987, they shall attempt to post a written notice of the same information at all entrances to the premises, and at other conspicuous places, in a manner and format likely to alert persons coming on to the premises.

d. Defendants shall immediately contact the Illinois EPA to request its direction concerning a protocol for sampling and analysis to determine whether hazardous wastes remain on the subject premises and shall follow its direction. In addition,, they shall perform any remedial activities determined to be necessary by the Illinois EPA. Defendants shall provide a written report to Plaintiff's counsel of all activities undertaken pursuant to the said directions and determination of Illinois EPA.

8. The Court reserves the issue of the amount of any civil penalty to be imposed for defendants' failures to comply with the order of the Administrative Law Judge, any failure to comply with the terms of this Judgment and Order, any additional remedial actions which may be necessary to protect public health.

October 28, 1987
Date

more pro forma

Sharon D. Parker
Judge, United States District Court

0316230001
11-6-89

NARRATIVE

Aero Plating Works at 1860 - 1850 N. Elston was an electroplater and formerly generated and stored cyanides, chromium and nickel in containers and tanks. The company ceased operating sometime in 1984 and shortly afterwards vacated the premises. The company was referred to USEPA on February 23, 1984. A CACO was issued on September 10, 1984 and a CAFO issued on February 13, 1986.

Seymour Shiner, property owner, was contacted for site access. 1860 N. Elston is presently unoccupied. This address was formerly a coffee house, "Cabaret Voltaire", and theatre, "Ooblick". The second floor was a florist. A trap door leading to a basement where several inches of waste was observed in the past was covered by sheet metal. A descent into this area was not possible. Mr. Shiner did not have keys to the second floor making it inaccessible for inspection. 1860 N. Elston looked as if it had been refurbished prior to becoming a theatre and coffeehouse.

"Fine Furniture Manufacturing" occupies the southern end of 1850 N. Elston. Most of 1850 N. Elston is being used for warehouse space. Mr. Shiner stated that he had cleaned and painted the floors and walls. He mentioned that he had to scrape a yellow/gold substance off of the walls .

The 1986 CAFO required Aero Plating to go through closure. As of this writing closure certification has not yet been submitted.

Continuing Apparent Violation

725.215 - Closure certification has not been submitted to the Agency.

CAG:bj:0195b



INSPECTION PHOTOS

DATE: <u>11</u> / <u>6</u> / <u>89</u>	Site #: <u>0</u> <u>3</u> <u>1</u> <u>6</u> <u>2</u> <u>3</u> <u>0</u> <u>0</u> <u>0</u> <u>1</u>	Co.: <u>Cook</u>
TIME: 2:30pm-3:15pm	Site Name: Aero Plating Works	
PHOTOGRAPH TAKEN BY: Carol A. Graszer	File: <u>FOS</u>	
COMMENTS: Pictures taken toward: <u>East</u> <u>Former</u> <u>Cabaret Voltaire</u>		
Roll #: <u>90-139</u> Photo #: <u>3</u>		

DATE: <u>11</u> / <u>6</u> / <u>89</u>	
TIME: 2:30pm-3:15pm	
PHOTOGRAPH TAKEN BY: Carol A. Graszer	
COMMENTS: Pictures taken toward: <u>East</u> <u>Former theatre</u> <u>Obelisk</u>	
Roll #: <u>90-139</u> Photo #: <u>4</u>	



INSPECTION PHOTOS


DATE: <u>11</u> / <u>6</u> / <u>89</u>	Site #: <u>0</u> <u>3</u> <u>1</u> <u>6</u> <u>2</u> <u>3</u> <u>0</u> <u>0</u> <u>0</u> <u>1</u> Co.: <u>COOK</u>
TIME: 2:30pm-3:15pm	Site Name: Aero Plating Works
PHOTOGRAPH TAKEN BY: Carol A. Graszer	File: <u>FOS</u>
COMMENTS: Pictures taken toward: <u>South</u> <u>Former "Chemical Room"</u>	
Roll #: <u>90-139</u> Photo #: <u>5</u>	


DATE: <u>11</u> / <u>6</u> / <u>89</u>	
TIME: 2:30pm-3:15pm	
PHOTOGRAPH TAKEN BY: Carol A. Graszer	
COMMENTS: Pictures taken toward: <u>North</u> <u>Warehouse Space</u>	
Roll #: <u>90-139</u> Photo #: <u>6</u>	



INSPECTION PHOTOS

DATE: <u>11 / 6 / 89</u>	Site #: <u>0 3 1 6 2 3 0 0 0 1</u>	Co.: <u>Look</u>
TIME: <u>2:30pm-3:15pm</u>	Site Name: <u>Aero Plating Works</u>	
PHOTOGRAPH TAKEN BY: <u>Carol A. Graszer</u>	File: <u>FOS</u>	
COMMENTS: Pictures taken toward: <u>NW</u>		
<u>12:50 - 12:55 PM</u>		
<u>Elston Former</u>		
<u>Aero Plating Works</u>		
<u>Location</u>		
Roll #: <u>90-139</u> Photo #: <u>1</u>		



DATE: <u>11 / 6 / 89</u>	
TIME: <u>2:30pm-3:15pm</u>	
PHOTOGRAPH TAKEN BY: <u>Carol A. Graszer</u>	
COMMENTS: Pictures taken toward: <u>West</u>	
<u>Formerly Theatre</u>	
<u>Cobble. Note</u>	
<u>metal in fire front -</u>	
<u>Basement trapdoor</u>	
<u>in this area</u>	
Roll #: <u>90-139</u> Photo #: <u>2</u>	

D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 87-C-4491
	)	Judge Rovner
)	
LOUIS J. MAIORANO, Sr. and)	
LOUIS J. MAIORANO, Jr. d/b/a)	
Aero Plating Works, Inc.,)	
)	
Defendants.)	

MOTION TO APPOINT SPECIAL MASTER
AND TO ADJUDGE DEFENDANT LOUIS J. MAIORANO Sr.
IN CIVIL CONTEMPT

Plaintiff, United States of America, hereby moves this court, pursuant to Rule 53 and Rule 70, Fed.R.Civ.P., for:

i) an order appointing a Special Master to perform those actions in the nature of closure which the Court required of the defendants by its Judgment Order, entered on October 28, 1987, and which they have failed to perform, and to assess the costs of the same against the defendants; and

ii) an order adjudging defendants Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. in contempt of said Judgment Order and imposing contempt fines and other appropriate relief.

Plaintiff's memorandum in support of this motion is attached hereto.

Respectfully Submitted,

E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil Action No. 87-C-4491
	)	Judge Rovner
)	
LOUIS J. MAIORANO, Sr. and)	
LOUIS J. MAIORANO, Jr. d/b/a)	
Aero Plating Works, Inc.,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION TO APPOINT A SPECIAL MASTER
AND TO ADJUDGE DEFENDANT LOUIS MAIORANO Sr. IN CIVIL CONTEMPT

Plaintiff, the United States of America, submits this memorandum in support of its motion seeking the appointment of a Master to assume responsibility for closure of the former Aero Plating Works, Inc. facility and for an order adjudging defendants Louis Maiorano Sr. and Louis Maiorano, Jr. in civil contempt, imposing contempt fines and other appropriate relief. It is apparent that defendants have shown no intention to properly close their facility and if responsibility is not assigned to such a Master, current and future occupants of the premises may face exposure to hazardous wastes that have been left in place by the defendants.

FACTUAL BACKGROUND

On May 18, 1987, the Department of Justice, on behalf of the United States Environmental Protection Agency (U.S. EPA), filed a civil action against Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. d/b/a Aero Plating Works, Inc. (Defendants). The complaint alleged that Defendants had failed to comply with an order of an Administrative Law Judge which required them to submit an approvable closure plan for the Aero Plating Works facility, to complete closure in accordance with the approved plan, to comply with Illinois off-site disposal requirements for hazardous waste and to pay civil penalties. It further alleged that Defendants failed to comply with an information request issued by U.S. EPA pursuant to Section 3007 of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. Section 6927. The relief sought by the complaint included injunctive relief in the form of compliance with the above-described order, payment of the administrative penalties assessed under the order, imposition of civil penalties for failure to comply with the order and for failure to comply with the U.S. EPA information request, and costs.

Upon discovery that the facility had been leased to new tenants, the United States moved this Court for a partial judgment on the pleadings, specifically on its request for injunctive relief. On October 28, 1987, this Court granted the government's motion and ordered, in part, that Defendants amend

and resubmit for Illinois Environmental Protection Agency's (IEPA's) approval a previously submitted closure plan; within 30 days of approval, complete closure in accordance with the approved plan; and upon completion, submit a certification of closure to the IEPA.

On July 25, 1988, conditional approval of the Defendants' closure plan was granted by IEPA. Under the terms of the approved closure plan, completion of closure was required by November 22, 1988 and certification of completion was to be submitted to IEPA within 60 days of completion, or by January 21, 1989.

Due to failure to submit the required certification of closure, on July 12, 1989, IEPA issued a Pre-Enforcement Conference Letter to Louis Maiorano, Jr., notifying him of the potential for commencement of formal action against him.

A facility inspection by IEPA followed. During that inspection, several areas of the facility in which waste had been observed in the past were inaccessible and therefore, the status of closure was unascertainable. A report of this inspection, which was performed on November 6, 1989, accompanied by another notice of continued failure to submit a certification of closure, was sent to Louis Maiorano, Jr. on December 4, 1989.

In an attempt to independently determine whether closure was ever implemented and whether a certification of closure was submitted, U.S. EPA contacted the consulting firm which had prepared the closure plan on behalf of the Maioranos. Based on that investigation, it appears that neither occurred. Currently,

Defendants remain in noncompliance with this Court's Order of October 1987 for failure to close the facility in accordance with an approved closure plan and for failure to submit certification of closure.

THIS COURT SHOULD EXERCISE ITS AUTHORITY TO
APPOINT A MASTER TO
ENSURE COMPLIANCE WITH ITS ORDERS

The Court's authority to ensure compliance with its orders derives both from statutory and common law sources. Rule 70 of Fed.R.Civ.P. provides that "if a judgment directs a party ... to perform any other specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court ...". Rule 53, Fed.R.Civ.P., authorizes the appointment of a master to supervise a court's orders. See Powell v. Ward, 487 F. Supp. 917 (S.D.N.Y. 1980), aff'd, mod. on other grounds, 643 F.2d. 924 (2d Cir.), cert. denied, 454 U.S. 832 (1981); Hart v. Community School Board of Brooklyn, District 21, 383 F. Supp. 699 (E.D.N.Y. 1974) and cases cited therein at page 765.

Moreover, the Court possesses inherent equity power to utilize the services of a master, administrator or other person to aid in obtaining compliance with its injunctive orders. Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982). In United States v. City of Detroit, 476 F. Supp. 512, 520 (E.D. Mich. 1979), the District Court utilized this power to appoint the Mayor of Detroit as Administrator of the sewage treatment system so as to

obtain compliance with the court's order requiring elimination of unlawful sewage discharges:

The exercise of such authority is founded in the broad range of equitable powers available to this court to enforce and effectuate its orders and judgments. See Terry v. Adams, 345 U.S. 461, 73 S.Ct. 809, 97 L.Ed. 1152 (1953); Mississippi Valley Barge Line Co. v. United States, 273 F. Supp. 1, 6 (E.D. Mo. 1967), aff'd sub nom. Osbourne v. Mississippi Valley Barge Line Co., 389 U.S. 579, 88 S.Ct. 692, 19 L.Ed.2d 779 (1968); United States v. Wallace, 218 F. Supp. 290, 292 (N.D. Ala. 1963).

The statute which this Court's Judgment Order seeks to enforce is an extremely important one. In it, Congress declared as our national policy, that "waste that is ... generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment", 42 U.S.C. Section 6902(b). The Defendants not only acted in disregard of that policy, but have also acted in total disregard of the law.

As this Court stated in its discussion of imposition of civil penalties in this case, "Defendants have not taken this matter seriously, and they have exhibited a pattern of behavior which evidences a complete disregard for statutory law, EPA orders, and judicial orders". (Memorandum Opinion and Order, p.6, para.1). Even after the imposition of a \$100,000 civil penalty against them, however, Defendants have failed to comply with the Court's October 1987 Judgment Order. It is imperative, therefore, that a special master be appointed in order to ensure that no hazardous waste remains at the facility, thus removing

the potential threat to human health and the environment, and to achieve compliance with the Court's Order of October 1987.

THIS COURT SHOULD ADJUDGE LOUIS MAIORANO, Sr.
AND LOUIS MAIORANO, Jr. IN CIVIL CONTEMPT

The Court has the inherent power to punish contempt of its authority and to coerce compliance with its orders. Ex parte Terry, 128 U.S. 289, 302-03 (1888). Additionally, Rule 70 of the Federal Rules of Civil Procedure empowers a court to hold a party in contempt if it fails to comply with an order of the court to perform a specific act. Violation of a court order need not be willful for a party to be found in civil contempt. McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949); TWM Manufacturing Co. v. Dura Corp., 722 F.2d 1261, 1273 (6th Cir. 1983); Van Drivers Local No. 392 v. Neal Moving and Storage, 557 F. Supp 187, 189 (N.D. Ohio 1983).

The United States, like any other civil litigant, is entitled to bring civil contempt proceedings and to benefit from orders entered in its behalf. United States v. United Mine Workers, 330 U.S. 258, 302 (1947). To make a prima facie showing of civil contempt, the United States need only prove that the defendants failed to comply with a valid court order. Sidney v. McDonald, 536 F. Supp. 420, 422 (D. Arizona 1982).

There is no dispute that the Defendants are in violation of the Court's 1987 Order. Defendants were given two formal opportunities, through the IEPA-issued Compliance Inquiry Letter and Pre-Enforcement Conference Letter, to come into compliance with the October 1987 Order by submitting a certification of closure. No response was provided, however, by them. The Court

should, therefore, use its authority to find Defendants in civil contempt and to impose contempt fines against them.

CONCLUSION

For the reasons stated, the motion of the United States should be granted. The United States requests that the Court schedule an evidentiary hearing on the issues presented by this motion for as early a date as the Court's calendar allows, and that the Court set an expeditious schedule for the completion of necessary discovery.

Respectfully submitted,

F



MEMORANDUM

DATE: June 16, 1989
TO: Gary King, Enforcement Decision Group
FROM: Mark Schollenberger DLPC/PMT
SUBJECT: 0316230001 — Cook County
Aero Plating
ILD005125836 Compliance

Aero plating was to submit closure certification by January 21, 1989. A review of our files is somewhat confusing, as no certification can be found but Carrie says she logged the certification in back in September. Numerous attempts to contact the owner/operator by phone was of no avail as Mr. Maiorano would not come to the phone, (i.e. we were told he was not available) or return phone calls. Next, a CIL was sent May 22, 1989, again, no response. Since then, we have learned that USEPA has filed a case against the Maiorano's for violations of the original consent decree which resulted in the filing of the closure plan to this Agency. For further information about this contact Charles McKinley at 886-6613.

USEPA has indicated that they would contact the Maiorano's attorney and inquire about the status of the closure certification for us. What do you recommend we do at this point in time.

MAS:dls/2021k,54

cc: Compliance File
Northern Region
Brian White

RECEIVED
JUN 28 1989

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS



Illinois Environmental Protection Agency

P. O. Box 19276, Springfield, IL 62794-9276

217/782-6761

Refer to: 0316230001 -- Cook County
Aero Plating
ILE005125836
Compliance File

COMPLIANCE INQUIRY LETTER

Certified # P131207545

May 22, 1989

RECEIVED
MAY 25 1989

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS

Louis J. Maiorano, Jr.
422 Mill Valley
Palatine, Illinois 60067

Dear Mr. Maiorano:

The purpose of this letter is to address the status of the above-referenced facility in relation to the requirements of 35 Ill. Adm. Code, Part 725 and to inquire as to your position with respect to the apparent violations identified in Attachment A and your plans to correct these apparent violations. The Agency's findings of apparent non-compliance in Attachment A are based on a April 26, 1989 review of documents submitted to the Agency to demonstrate compliance with the requirements of Subpart E.

Please submit in writing, within fifteen (15) calendar days of the date of this letter, the reasons for the identified violations, a description of the steps which have been taken to correct the violations and a schedule, including dates, by which each violation will be resolved. The written response, and two copies of all documents submitted in reply to this letter, should be sent to the following:

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Illinois Environmental Protection Agency
Division of Land Pollution Control
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276

Further, take notice that non-compliance with the requirements of the Illinois Environmental Protection Act and rules and regulations adopted thereunder may be the subject of enforcement action pursuant to either the Illinois Environmental Protection Act, Ill. Rev. Stat., Ch. 111 1/2, Sec. 1001 et seq. or the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et seq.



Page 2

If you have any questions regarding the above, please contact Mark Schollenberger at 217/782-6762.

Sincerely,

Angela Aye Tin

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Division of Land Pollution Control

AAT:BN:jd/1621k,49-50

cc: Division File
Maywood Region
Mark Schollenberger
Brian White
Mary Murphy-IISEPA



Attachment A

1. Pursuant to 35 Ill. Adm. Code 725.215, when closure is completed, the owner or operator must submit to the Director certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan. You are in apparent violation of this Section for the following reason(s): Item 1 of the closure plan approved July 25, 1988 required closure activities to be completed by November 22, 1988. The certification that the facility had been closed in accordance with the approved closure plan was to be received at this Agency within 60 days after closure, or by January 21, 1989. As of the date of this letter, the Agency has not received a certification of closure from the above referenced facility.

AAT:EK:jd/1821k,51

G

assigned to
Liz Murphy

6-4247

1/29/90

To: ① Paul Dimock
② Ron Brown

Re: Aero Plating.

Attached is a recent Court decision on this case.
Note p. 2 of C. McKinley's memo where he asks
us to follow-up on the closure certification with Aero's
consultant. Please do so & let me know what you
find out. Also, you need to get this and the
the earlier judgment (I don't think I've ever seen a copy
of it) in CAFEOTRAC. ¹⁻³¹⁻⁹⁰ ^{done} Finally, please do a writeup
for this week's weekly report. ¹⁻³¹⁻⁹⁰ ^{done}

Thanks,

Bill

P.S. I've sent a copy of the decision to Suzanne Kivros
& asked her to do a press release.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

JAN 24 1990

MEMORANDUM

SUBJECT: United States v. Maiorano

FROM: Charles McKinley *cmk*
Assistant Regional Counsel

TO: Bill Muno, Chief
RCRA Enforcement Branch

Enclosed is a copy of the Memorandum Opinion and Order in the above referenced case which was recently issued by the District Court. The Court accepted our suggested penalty amount of \$100,000 and briefly discussed the penalty analysis approach which we had suggested in our brief. She also made reference to the importance of providing a deterrent, which we had urged was a critical consideration. (Counsel to the Maioranos also represents the association of electroplaters in this area, so we hope the "message" will be delivered to a wide audience.)

Given what we know of Maiorano, Jr's financial circumstances, a \$100,000 penalty is a substantial amount (his tax return indicates an income of less than \$15,000). However, since we still have not obtained any reliable financial information about Louis Mariorano, Sr., it is not known whether it will be difficult to recover the penalty. The U.S. Attorney intends to issue a Citation to Discover Assets in the near future. It is not unlikely that a payment schedule will be established, similar to the one utilized to pay off the administrative penalty which the court reduced to a judgement in 1987.

In an unrelated development, I have recently received a communication from the Illinois EPA requesting that we undertake further enforcement action against the Maioranos for their failure to submit a closure certification. I am reluctant to commit the resources of the United States to this undertaking unless all other reasonable efforts have been expended to obtain the certification. My view in this regard is a function, in part, of the earlier IEPA statements that they believe that they received such a certification but have misplaced it. Though I have made some strong suggestions to counsel for the Maioranos that he obtain a duplicate copy of the certificate and submit it, this has apparently not been accomplished. Another alternative would be for

Frank Altmaier
(312) 254-2406
IEPA, or US EPA, to contact the consultant who drafted the closure plan, Ronald Bahr of Scientific Control Laboratories, and who presumably oversaw its implementation, to see whether a certificate of closure was submitted, and if so, to obtain a duplicate copy. Would you have the program person who is assigned, which I think is still Ron Brown, give me a call to discuss this approach?

By the way, since counsel has not be paid by the Maioranos, I doubt that an appeal will be taken of the penalty award.

If there is any other information about this case that you would like, please give me a call.

Enclosure

cc: Lynn Peterson

Wallace

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge or Magistrate	JUDGE ILANA D. ROVNER	Sitting Judge/ Mag. If Other Than Assigned Judge/ Mag.	
Case Number	87 C 4491	Date	Jan. 8, 1990
Case Title	USA v. MAIORANO, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

POSTED
JAN 09 1990
IN DOCKETING U.S. ATTORNEY'S OFFICE NORTHERN DISTRICT OF ILLINOIS

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) ☒ Judgment is entered as follows: (2) ☐ [Other docket entry:]

Government's motion for imposition of civil penalty is granted. A civil penalty of \$100,000 is imposed on defendants to be paid to the United States of America.

Ilana D. Rovner

(3) ☐ Filed motion of [use listing in "MOTION" box above]

(4) ☐ Brief in support of motion due _____

(5) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(6) ☐ Hearing on _____ set for _____ at _____

(7) ☐ Ruling _____

(8) ☐ Status hearing ☐ held ☐ continued to _____ set for _____ reset for _____ at _____

(9) ☐ Pretrial conference ☐ held ☐ continued to _____ set for _____ reset for _____ at _____

(10) ☐ Trial ☐ set for _____ reset for _____ at _____

(11) ☐ Bench trial ☐ Jury trial ☐ Hearing held and continued to _____ at _____

(12) ☐ This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to _____

(13) ☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)

(14) ☒ [For further detail see ☐ order on the reverse of ☒ order attached to the original minutes order form.]

No notices required. Notices mailed by judge's staff. Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. Mail AO 450 form. Copy to judge magistrate. Courtroom deputy's initials: <i>[initials]</i>	Date/time received in central clerk's office: <i>[blank]</i>	<i>Darius Wallace</i> JAN 9 1990 <i>[initials]</i> JAN 9 1990 <i>[initials]</i>	Number of notices: <i>[blank]</i> Date docketed: <i>[blank]</i> Docketing copy made: <i>[blank]</i> Date mail notices: <i>[blank]</i> Making copy: <i>[blank]</i> Document #: <i>41</i>
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.	)	No. 87 C 4491
)	
LOUIS J. MAIORANO, SR. and	)	Hon. Ilana D. Rovner
LOUIS J. MAIORANO, JR. d/b/a)	
AERO PLATING WORKS, INC.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This case was brought by the United States for injunctive relief and civil penalties pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6928(a) and (g). The complaint alleged that defendants had violated an administrative order entered by the U.S. Environmental Protection Agency ("EPA"). On October 28, 1987, the Court granted the government's motion for partial judgment on the pleadings. The sole remaining issue is the government's request for imposition of a civil penalty.

II. FACTS

The defendants, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr., owned and operated an electroplating business called Aero Plating Works, Inc., until the mid 1980's. This business generated hazardous wastes. In September 1984,

following inspections by the Illinois Environmental Protection Agency ("IEPA"), the EPA issued an Administrative Complaint and Compliance Order to defendants alleging violations of federal and state hazardous waste laws and regulations. An administrative hearing was held in July 1985. On February 13, 1986, after finding numerous violations in connection with the storage and disposal of hazardous wastes, the administrative law judge issued an order requiring defendants to submit a closure plan for EPA approval, to complete closure within thirty days of EPA approval, and to comply with Illinois regulations concerning off-site transportation of hazardous wastes. The order also required Louis J. Maiorano, Jr. to pay a civil penalty of \$3,500 and held defendants jointly and severally liable for an additional civil penalty of \$18,500. Defendants did not appeal the order, which accordingly became final on April 13, 1986 pursuant to 40 C.F.R. §22.27(c).

On February 3, 1987, the EPA requested certain information from defendants concerning the facility pursuant to Section 3007 of the RCRA, 42 U.S.C. §6927. Defendants were required to respond in seven days but did not do so.¹ Defendants apparently complied with the EPA's information request on October 23, 1987.

Defendants failed to comply with any of the provisions of the EPA order or with the EPA information request. On May 18, 1987, the government filed this lawsuit seeking enforcement of

¹ See United States v. Charles George Trucking Co., 823 F.2d 685, 688-89 (1st Cir. 1987) (affirming civil penalty under RCRA for failure to respond to EPA information request).

the order and information request and the imposition of civil penalties.

On October 16, 1987, defendants finally submitted a closure plan to the IEPA. On December 10, 1987, the IEPA notified defendants that their submission was deficient and directed them to submit a revised plan within 30 days. Defendants requested an extension to February 5, 1988, and they did not submit a revised plan until June 9, 1988.

In the meantime, no lawful closure of the premises could occur without an approved closure plan. Nonetheless, the premises were being relet to new tenants. Upon discovering this, the government moved for partial summary judgment on the pleadings with respect to its request for injunctive relief. That motion was granted by this Court on October 28, 1987. Provision 7 of the Judgment Order required defendants to notify the new owner, tenants, and other persons at the facility of the potentially hazardous conditions. Among other things, defendants were required to post notices that the facility had "utilized hazardous materials and that it has not been shown that said facility was properly closed and that all hazardous wastes have been fully removed and properly disposed."

On December 23, 1987, the government notified defendants that they had not complied with Provision 7 or with Provisions 5 and 6, which ordered payment of the penalties set by the EPA. On January 22, 1988, defendants submitted to the EPA a copy of the notice which they had posted on the premises. It stated merely:

"CAUTION: A Plating Shop Once Occupied This Building.

10/29/87." Provision 7 also required written notification to certain identified persons, and defendants did not comply with this requirement until January 22, 1988.

Defendants also failed to satisfy the monetary judgment portion of the order. Accordingly, on March 1, 1988, the Clerk of Court issued a Citation in Supplemental Proceedings requiring defendants to appear on April 1, 1988 to be examined under oath concerning their property and income and to bring with them certain financial documents. As a result, the government and defendants agreed on a payment plan.

III. DETERMINATION OF PENALTY

Section 3008(g) of the RCRA provides:

Civil penalty -- Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

42 U.S.C. §6928(g). The government argues that the number of days of violation should be computed as follows:

<u>Violation</u>	<u>Dates of Violation</u>	<u>Days of Violation</u>
Failure to submit closure plan pursuant to EPA order	5/12/86-10/16/87	515
Failure to respond to EPA information request	2/20/87-10/23/87	270
Failure to submit revised closure plan	2/5/88-6/8/88	124
<hr/>		
Total Days of Violation		909

Defendants have not objected to this computation, and the Court agrees that the maximum penalty should be determined on the basis of 909 days of violation. Multiplication of this number by the maximum daily fine of \$25,000 yields a maximum penalty of \$22,725,000.

The government argues that a substantial penalty is warranted for reasons of deterrence.² The Court agrees. In determining an appropriate penalty, the Court should consider the seriousness of the violation and the extent of any good faith efforts to comply. See United States v. T & S Brass and Bronze

² See United States v. T & S Brass and Bronze Works, Inc., 681 F.Supp. 314, 322 (D.S.C.) (the major purpose of a civil penalty is deterrence), aff'd in relevant part, 28 E.R.C. 1649, 19 Env't'l L. Rep. 20,857 (4th Cir. 1988). See also United States v. Environmental Waste Control, Inc., 710 F.Supp. 1172, 1244 (N.D. Ind. 1989).

Works, Inc., 681 F.Supp. 314, 322 (D.S.C.), aff'd in relevant part, 28 E.R.C. 1649, 19 Env't'l L. Rep. 20,857 (4th Cir. 1988). Defendants' violations were not minor; they were rather serious. Not only were their substantive violations extensive, as documented in the EPA order, but they disregarded specific orders as well, and there are few acts as serious as violations of orders once the facts have already been adjudicated. Defendants have not taken this matter seriously, and they have exhibited a pattern of behavior which evidences a complete disregard for statutory law, EPA orders, and judicial orders. To impose merely a perfunctory or token penalty would send a message to similarly situated persons that they may flout the law without consequence.

Defendants point to delays occasioned by the IEPA's failure to promptly respond to defendants' closure plans. However, there is no showing that the amount of time the IEPA took to review the plans was inordinate, and, in any event, those alleged delays cannot excuse defendants' own conduct.

Defendants also emphasize their own personal financial circumstances, apparently in the hope that their lack of affluence will influence the Court's determination of an appropriate penalty. Although the ability to pay may warrant consideration in some circumstances, the Court does not view it as a particularly significant factor in this case. Defendants have never provided evidence concerning their financial

circumstances, despite numerous opportunities to do so.³ Furthermore, defendants have been so intransigent that they are in no real position to request mercy based on their personal circumstances.

The government has suggested that a civil penalty of \$100,000--about \$110 per day--would be appropriate. Although this figure is a relatively small proportion of the maximum penalty, it is nonetheless a substantial sum, and it would serve the deterrence purposes of §3008(g) of the RCRA.⁴ The Court agrees that it is an appropriate penalty.

IV. CONCLUSION

A civil penalty of \$100,000 is hereby imposed on defendants, to be paid to the United States of America.

ENTER:


ILANA DIAMOND ROVNER
UNITED STATES DISTRICT JUDGE

DATED: January 8, 1990

³ The government has sought financial information from defendants as part of settlement negotiations (conducted both with and without this Court's assistance), and defendants' financial records were subject to disclosure through the Citation in Supplemental Proceedings.

⁴ This figure is considerably lower than penalties imposed in other RCRA cases. See Environmental Waste, *supra*, 710 F.Supp. at 1245 (imposing penalty of \$2,000 per day); T & S Brass, *supra*, 681 F.Supp. at 322 (imposing penalty of \$1,000 per day).



708/345-9780

Refer to: 0316230001 - Cook County
Aero Plating Works
ILD005125836
Compliance File

RECEIVED
JAN 10 1990
OFFICE OF RCRA
Waste Management Division
U.S. EPA, REGION IV

January 8, 1990

Mr. Charles McKinley
Assistant Regional Counsel
U.S. Environmental Protection Agency
230 S. Dearborn Street, 5C-16
Chicago, Illinois 60604

Re: Second Supplement to Request for Compliance Order
Louis Maiorano, Jr., d/b/a Aero Plating Works
IEPA File 7038 HAZ

Dear Mr. McKinley:

On February 23, 1984 this Agency requested the U.S. Environmental Protection Agency to issue a Compliance Order to Louis Maiorano, Jr., d/b/a Aero Plating Works. Since that time your office has prosecuted the case both administratively and before the U.S. District Court. A supplement to this referral was mailed to you on September 13, 1989.

This letter further supplements the IEPA referral. A recent IEPA inspection on November 6, 1989 revealed Mr. Maiorano has still failed to complete closure activities at the site as required by 35 Ill. Adm. Code 725.215. This is the same violation that was referred on September 13, 1989. The documents relating to this non-compliance are enclosed.


We request that you continue your enforcement action against Louis Maiorano, Jr. and Louis Maiorano, Sr. to seek compliance with this regulation now being violated.

CC: Liz Murphy 5CS-TUB-7

January 8, 1990
Page 2

Thank you for your service in this matter.

Sincerely,


Donald L. Gimbel
Staff Attorney
Enforcement Programs

DLG:bh:4548B

cc: Bill Muno, USEPA
Lynn Peterson, USEPA
Bill Radlinski
Gary King
Division File
Maywood Region
Linda Cooper

no enclosure w/ this copy - WEM



Illinois Environmental Protection Agency • P. O. Box 19276, Springfield, IL 62794-9276

217/782-6761

Refer to: 0316230001 -- Cook County
Aero Plating Works
ILD005125836
Compliance File

December 4, 1989

Louis J. Maiorano, Jr.
422 Mill Valley
Palatine, IL 60067

Dear Mr. Maiorano:

On November 6, 1989, your facility was inspected by Carol Graszer of the Illinois Environmental Protection Agency. The purpose of this inspection was to determine your facility's compliance with 35 Illinois Administrative Code, Part 725, Subpart(s) 6. At the time of this inspection, apparent violations found in previous inspection(s) were again observed.

For your information, a copy of the inspection report is enclosed. Should you have any questions regarding the inspection, please contact Carol Graszer at 708/345-9780.

Sincerely,

Angela Aye Tin, Manager
Technical Compliance Unit
Compliance Section
Division of Land Pollution Control

AAT:CAG:BN/mls/4092k/87

Enclosure

cc: Division File
Maywood Region
Bert Stone
Brian White

RECEIVED
DEC 06 1989

ILL. E.P.A. - D.L.P.C.
STATE OF ILLINOIS



DATE: November 13, 1989
TO: Gary King, EDG
FROM: Carol A. Graszer, DLPC/FOS
SUBJECT: 0316230001 - Cook County
Chicago/Aero Plating Works
ILD005125836

FOS Recommendation

FOS Recommends that EDG update USEPA as to CAFO compliance.

Continuing Apparent Violation

725.215 - Closure certification has not been submitted to the Agency

Background

Aero Plating Works was an electroplater that generated and stored cyanide, nickel and chromium wastes. Operations ceased around 1984. USEPA issued a CACO (9-10-84) and CAFO (2-13-86). The subject site is out of compliance with those orders because closure certification has not been submitted to the Agency. A CIL (5-22-89) and PECL (7-12-89) were sent to the former operator Louis J. Maiorano, Jr. Neither letter received a response. Copies of these letters have been forwarded to Bert Stone, Maiorano's attorney, per a request by Stone to USEPA Assistant Regional Counsel, Charles McKinley.

CAG:bj:0195b

cc: Glenn Savage
Division File
Maywood Region
HWRC - Brian White

CONFIDENTIAL



Illinois Environmental Protection Agency

Aerop. ding works
0316230001

1701 First Avenue, Maywood, IL 60153

312/345-9780

November 13, 1989

Bertram Stone
Stone, Pogrund, Korey & Spagat
28th Floor
221 North LaSalle Street
Chicago, IL 60601

Dear Mr. Stone:

Charles McKinley, USEPA Assistant Regional Counsel, requested that a copy of the May 22, 1989 Compliance Inquiry Letter and the July 12, 1989 Pre-Enforcement Conference Letter addressed to Louis J. Maiorano Jr. be sent to your office. Enclosed please find the two aforementioned letters. If you have any questions regarding the apparent violation contact Carol A. Graszer at 708/345-9780.

Sincerely,

Clifford Gould, Northern Region Manager
Field Operations Section
Division of Land Pollution Control

CAG:1b:01621

cc: Charles McKinley
Mark Schollenberger
Brian White
Division File
Maywood Region

INSPECTION REPORT

TYPE OF FACILITY**TYPE OF INSPECTION**

NON-REGULATED STATUS

PART A

PART B PERMIT APPLICATION

ENFORCEMENT

TSD FACILITY ACTIVITY SUMMARY[illegible]

SUMMARY OF APPARENT VIOLATIONS

OWNER

OPERATOR - NOT OPERATIVE

Name	Seymour Shiner	Name	
Address	NOT AVAILABLE	Address	
City		City	
State	Zip	State	Zip
Phone #	312/743-5210	Phone #	

PERSON(S) INTERVIEWED

TITLE

PHONE

Seymour Shiner	Owner	312/743-5210

INSPECTION PARTICIPANT(S)

AGENCY/TITLE

PHONE

Carol Grasser	IEPA / EPS	708/345-9780

PREPARED BY

AGENCY/TITLE

PHONE

Carol Grasser	IEPA / EPS	708/345-9780
---------------	------------	--------------

Area	Class	Section
SLC	1	725.215 *

Area	Class	Section

Area	Class	Section

* CONTINUING APPARENT VIOLATION

0316230001
11-6-89

NARRATIVE

Aero Plating Works at 1860 - 1850 N. Elston was an electroplater and formerly generated and stored cyanides, chromium and nickel in containers and tanks. The company ceased operating sometime in 1984 and shortly afterwards vacated the premises. The company was referred to USEPA on February 23, 1984. A CACO was issued on September 10, 1984 and a CAFO issued on February 13, 1986.

Seymour Shiner, property owner, was contacted for site access. 1860 N. Elston is presently unoccupied. This address was formerly a coffee house, "Cabaret Voltaire", and theatre, "Ooblick". The second floor was a florist. A trap door leading to a basement where several inches of waste was observed in the past was covered by sheet metal. A descent into this area was not possible. Mr. Shiner did not have keys to the second floor making it inaccessible for inspection. 1860 N. Elston looked as if it had been refurbished prior to becoming a theatre and coffeehouse.

"Fine Furniture Manufacturing" occupies the southern end of 1850 N. Elston. Most of 1850 N. Elston is being used for warehouse space. Mr. Shiner stated that he had cleaned and painted the floors and walls. He mentioned that he had to scrape a yellow/gold substance off of the walls .

The 1986 CAFO required Aero Plating to go through closure. As of this writing closure certification has not yet been submitted.

Continuing Apparent Violation

725.215 - Closure certification has not been submitted to the Agency.

CAG:bj:0195b

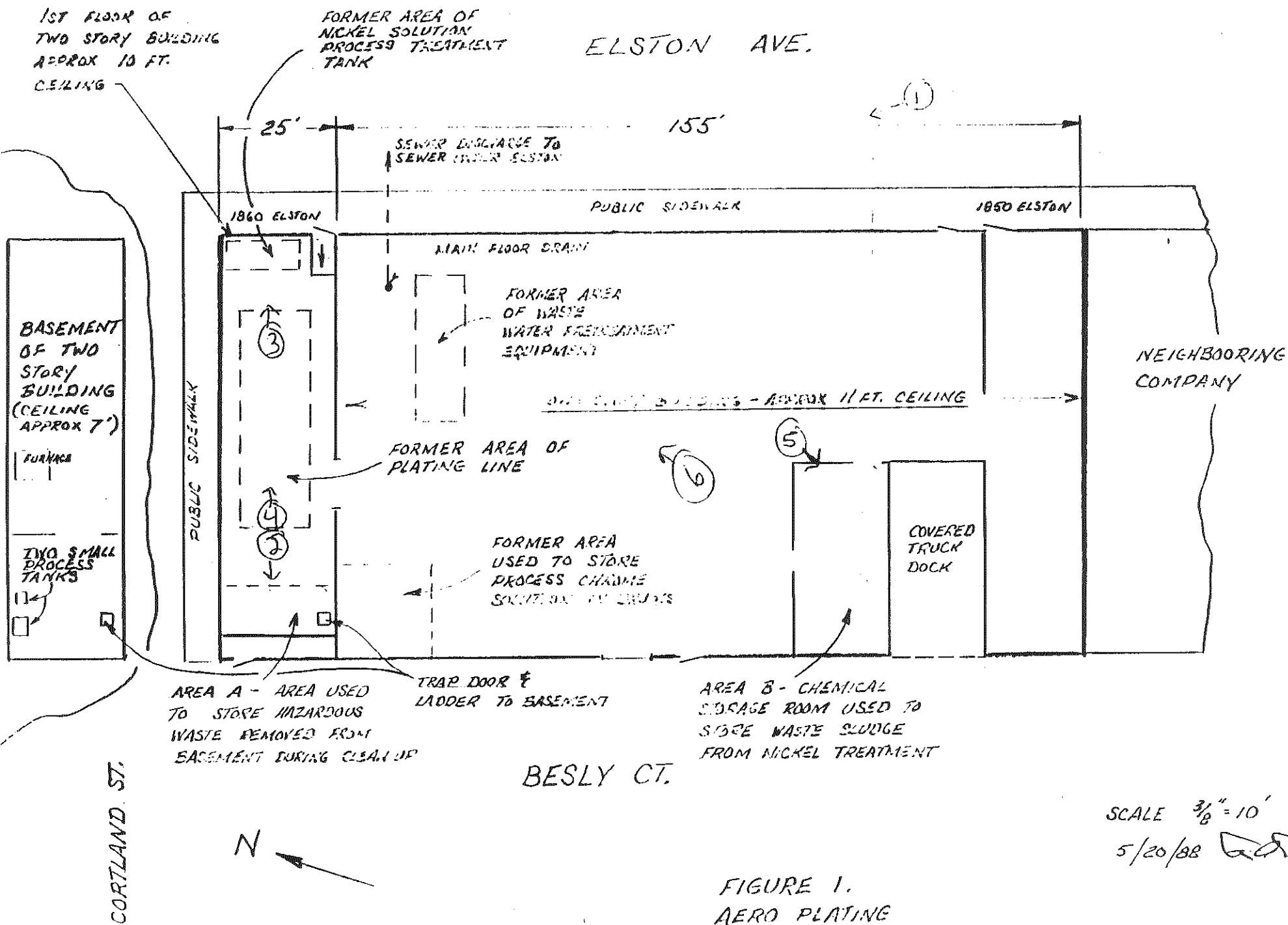


FIGURE 1.
AERO PLATING



INSPECTION PHOTOS

DATE: 11 / 6 / 89

Site #: 0 3 1 6 2 3 0 0 0 1

Co.: COOK

TIME: 2:30pm-3:15pm

Site Name: Aero Plating Works

PHOTOGRAPH TAKEN

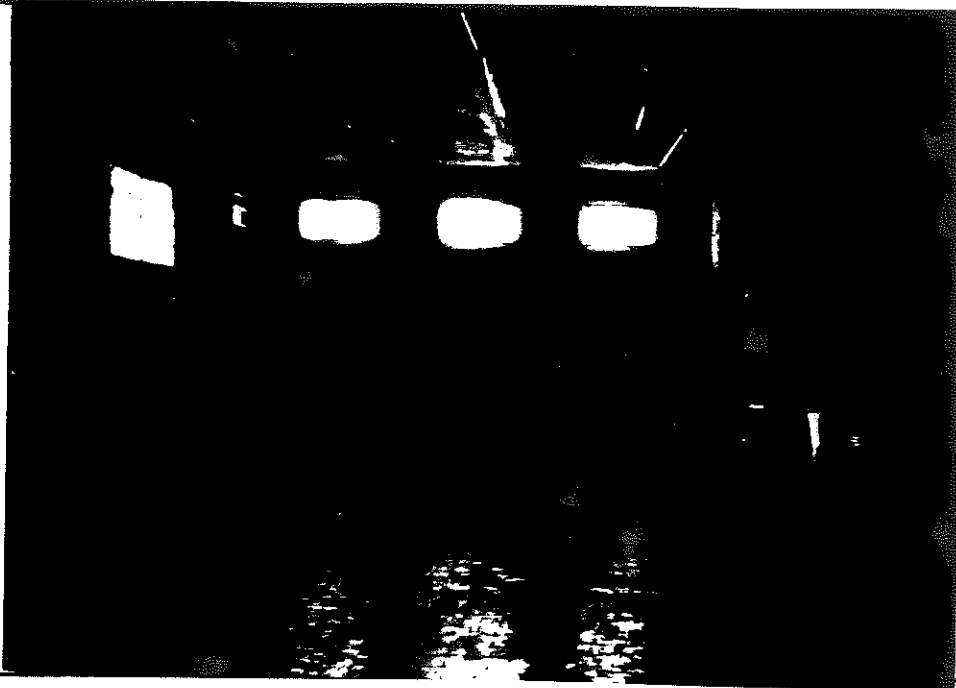
BY: Carol A. Graszer

File: FOS

COMMENTS: Pictures taken
toward: East

Former

Cabaret Voltaire



Roll #: 90-139 Photo #: 3

DATE: 11 / 6 / 89

TIME: 2:30pm-3:15pm

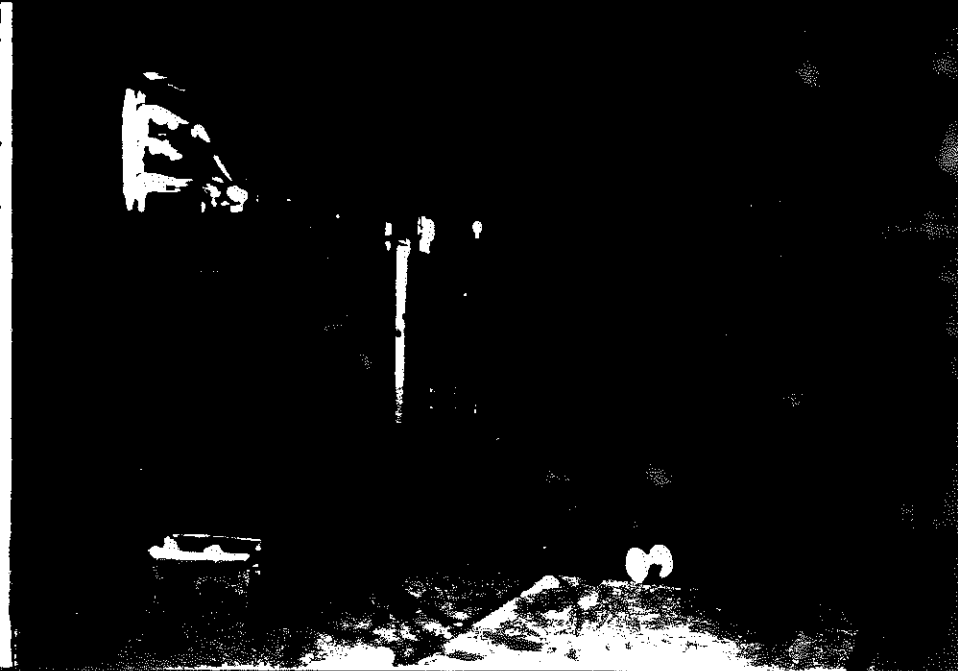
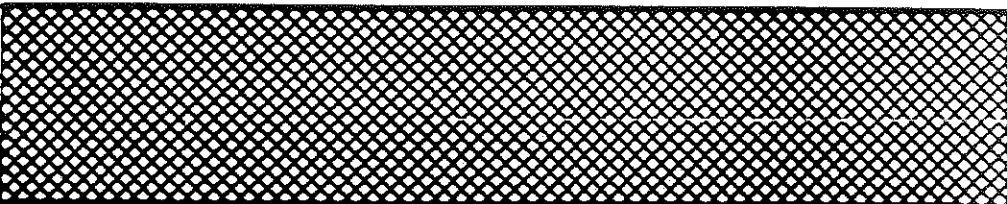
PHOTOGRAPH TAKEN

BY: Carol A. Graszer

COMMENTS: Pictures taken
toward: East

Former theatre

Oblick



Roll #: 90-139 Photo #: 4



INSPECTION PHOTOS

DATE: <u>11 / 6 / 89</u>	Site #: <u>0 3 1 6 2 3 0 0 0 1</u> Co.: <u>COOK</u>
TIME: <u>2:30pm-3:15pm</u>	Site Name: <u>Aero Plating Works</u>
PHOTOGRAPH TAKEN BY: <u>Carol A. Graszer</u>	File: <u>FOS</u>
COMMENTS: Pictures taken toward: <u>South</u>	
<u>Former "Chemical Room"</u>	
Roll #: <u>90-139</u> Photo #: <u>5</u>	

DATE: <u>11 / 6 / 89</u>	
TIME: <u>2:30pm-3:15pm</u>	
PHOTOGRAPH TAKEN BY: <u>Carol A. Graszer</u>	
COMMENTS: Pictures taken toward: <u>North</u>	
<u>Warehouse Space</u>	
Roll #: <u>90-139</u> Photo #: <u>6</u>	



INSPECTION PHOTOS

DATE: <u>11 / 6 / 89</u>	Site #: <u>0 3 1 6 2 3 0 0 0 1</u> Co.: <u>Cook</u>
TIME: <u>2:30pm-3:15pm</u>	Site Name: <u>Aero Plating Works</u>
PHOTOGRAPH TAKEN BY: <u>Carol A. Graszer</u>	File: <u>FOS</u>
COMMENTS: Pictures taken toward: <u>NW</u>	
<u>1945 - 1950 NW</u>	
<u>ELSEN Former</u>	
<u>Aero Plating Works</u>	
<u>Location</u>	
Roll #: <u>90-139</u> Photo #: <u>1</u>	

DATE: <u>11 / 6 / 89</u>	
TIME: <u>2:30pm-3:15pm</u>	
PHOTOGRAPH TAKEN BY: <u>Carol A. Graszer</u>	
COMMENTS: Pictures taken toward: <u>West</u>	
<u>Formerly Theatre</u>	
<u>Cabaret. Note</u>	
<u>metal in firefront -</u>	
<u>Basement trap door</u>	
<u>in this area</u>	
Roll #: <u>90-139</u> Photo #: <u>2</u>	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5CS-TUB-3

JUL 22 1988

MEMORANDUM

SUBJECT: United States v. Maiorano

FROM: Charles McKinley *cmk* 6-4247
Assistant Regional Counsel

TO: Bill Muno
Acting Associate Division Director
Office of RCRA

Enclosed is a copy of the memorandum in support of the Government's Motion for Assessment of a Civil Penalty in the Maiorano matter (Aero Plating). The motion is now scheduled for hearing on August 2, though defendants' counsel will undoubtedly request a continuance. You will note that we suggest a penalty of not less than one hundred thousand dollars (\$100,000). The Program's calculation of a proposed penalty, as of December, 1987, was approximately eighty four thousand dollars. Since the defendants have not fully performed the obligations of the court's order entered in October, 1987 the hundred thousand dollar figure is consistent with an increment associated with that additional failure. Needless to say, a Federal Court has wide discretion in assessing a civil penalty, and even if the fine is substantial, it may not be collectible, so don't start spending this money. (Since we summoned them into court to examine their tax records, they have paid their monthly installments regularly. And a revised closure plan was recently submitted to IEPA, so some progress is being made).

cc: Thomas Daggett
Ron Brown

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
	)	Civil Action No. 87 C 4491
v.)	
	)	Judge Ilana D. Rovner
LOUIS J. MAIORANO, SR. and)	
LOUIS J. MAIORANO, JR. d/b/a)	
AERO PLATING WORKS, INC.,)	
)	
Defendants.)	

UNITED STATES' MEMORANDUM OF LAW
REGARDING ASSESSMENT OF A CIVIL PENALTY

On October 28, 1987, this Court entered judgment against Defendants Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. d/b/a/ Aero Plating Works Inc. ("Defendants") pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928, for violations of a United States Environmental Protection Agency administrative order (the "U.S. EPA Order"). The U.S. EPA Order related to violations of federal and state laws regarding the treatment, storage, and disposal of hazardous waste at the premises formerly occupied by Aero Plating Works, Inc. ("the Aero Plating facility"). The only remaining issue in this case is the United States' claim for civil penalties pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

Pursuant to this Motion, the United States respectfully requests that the Court assess a civil penalty against the Defendants in this case. The statutory framework and the factors to be considered by the Court in assessing the penalty are discussed below. Based on these factors and the facts of this

case, the United States believes that the imposition of a substantial penalty is warranted.

STATUTORY FRAMEWORK

The complaint in this case seeks injunctive relief and civil penalties for Defendants' violations of the order issued to Defendants by U.S. EPA and of an information request also issued to Defendants by U.S. EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of U.S. EPA to issue administrative orders requiring compliance with RCRA. Section 3008(a) of RCRA, 42 U.S.C. 6928(a), authorizes the United States to file an action in federal court for injunctive relief and civil penalties for, among other things, violations of U.S. EPA administrative orders. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the Court to impose a civil penalty of not more than \$25,000 per day of violation for any violation of RCRA.

STATEMENT OF FACTS

Until the mid 1980's, Louis J. Maiorano, Jr. owned and operated Aero Plating Works, Inc. ("Aero Plating"), an electroplating business located in Chicago, Illinois.¹ Louis J. Maiorano, Sr. owned the property at which the Aero Plating facility was located and leased the premises to Louis J. Maiorano, Jr.

¹ Operations at Aero Plating ceased independent of U.S. EPA's administrative action regarding RCRA violations.

Aero Plating's operation generated hazardous wastes. In September 1984, following inspections by the Illinois Environmental Protection Agency ("IEPA") in late 1983 and early 1984, U.S. EPA issued an Administrative Complaint and Compliance Order to Defendants alleging violations of federal and state hazardous waste laws and regulations. Defendants requested a hearing on this matter, and in July 1985, an administrative due process hearing was held. On February 13, 1986, the administrative law judge issued an order requiring Defendants to submit for U.S. EPA approval a closure plan² for the Aero Plating facility, to complete the closure within thirty days of U.S. EPA approval, and to comply with Illinois regulations regarding the off-site transportation of hazardous wastes. In addition, the order required Louis J. Maiorano, Jr. to pay a civil penalty of \$3,500 and held Defendants jointly and severally liable for an additional civil penalty of \$18,500. Defendants did not appeal the order of the administrative law judge: therefore, pursuant to 40 C.F.R. §22.27(c), it became a final order of the U.S. EPA Administrator (the "U.S. EPA Order") on April 13, 1986.

Defendants failed to comply with any of the requirements of the U.S. EPA Order. Thus, on May 18, 1987, the United States filed this action seeking to enforce the injunctive and

² In general, a closure plan describes the dismantling, decontamination, and other related activities to be undertaken when a hazardous waste facility ceases to operate. The purpose of closure is to control, minimize, or eliminate threats to human health and the environment posed by hazardous waste. See 40 C.F.R. §265.111.

administrative penalty provisions of the U.S. EPA Order, to obtain civil penalties for Defendants' failure to comply with the U.S. EPA Order, and to obtain civil penalties for Defendants' failure to respond to the Information Request issued by U.S. EPA pursuant to Section 3007 of RCRA.

At a status hearing on October 28, 1987, the United States moved this Court for entry of a partial judgment on the pleadings. The Court granted the Motion, and issued a Judgment Order which, as summarized below, required the Defendants to do, among other things, the following:

1. Submit an approvable closure plan to the IEPA;
2. If IEPA determined the closure plan to be inadequate, submit a revised closure plan within ten (10) days of such determination;
3. Complete closure of the Aero Plating facility within 30 days of IEPA approval of the closure plan;
4. Submit to U.S. EPA all information requested in U.S. EPA's February 3, 1987 Information Request issued to Defendants;
5. Pay \$18,500 plus interest;
6. On October 28, 1987 orally notify the present owner, tenant(s), occupant(s), contractor(s), and any other persons on the premises where the Aero Plating facility was located that the facility used hazardous materials and that it has not been shown that the facility was properly closed;
7. No later than October 29, 1987, provide written notice to the same persons identified in paragraph 6 above of

the same information found in paragraph 6 above;

8. Post written notices at all entrances to the premises detailing the information described in paragraph 6 above; and
9. Contact IEPA to request direction regarding protocols for sampling and analysis to determine whether hazardous wastes remain on the premises.

In addition, the Court ordered Louis J. Maiorano, Jr. to pay \$3,500 plus interest.

The Court expressly reserved the issue of the amount of civil penalty to be imposed for Defendants' failure to comply with the U.S. EPA Order and for any failure to comply with the Judgment Order.

FACTORS TO BE CONSIDERED BY THE COURT

Assessment of the amount of a civil penalty is committed to the informed discretion of the Court. United States v. ITT Continental Baking Co., 420 U.S. 223, 230 n.6 (1975); United States v. Phelps Dodge Industries, Inc., 589 F.Supp. 1340, 1362 (S.D.N.Y. 1984) ("Phelps Dodge"). In exercising this discretion, the Court should assess a penalty which will deter future violations by the Defendants (and similar offenses by others) and thereby give effect to the major purpose of a civil penalty. See United States v. T & S Brass and Bronze Works, Inc., 27 ERC 1220 (D.S.C. 1988); Chesapeake Bay Foundation v. Gwaltney of Smithfield, 611 F.Supp. 1542, 1556 (E.D. Va. 1985), aff'd 791 F.2d 304, 315 (4th Cir. 1986), reversed on other grounds, ___ U.S.

_, 108 S.Ct. 376 (1987); Phelps Dodge, 589 F.Supp. at 1358; United States v. Velsicol Chemical Corp., 12 E.R.C. 1417, 1421 (W.D. Tenn. 1978); United States v. Swingline, Inc., 371 F.Supp. 37,47 (E.D.N.Y. 1974) ("Swingline"). "Civil penalties should be large enough to hurt, and to deter anyone in the future from showing as little concern as [the defendant] did for the need to [comply]." Phelps Dodge, 589 F.Supp. at 1967, quoting Swingline, 371 F.Supp. at 47.

Like the deterrent effect on the Defendants, the deterrent effect on other members of the RCRA - regulated community is as important a consideration in assessing a civil penalty. Even if these Defendants are not in a position to repeat the violations, a substantial penalty is warranted to deter others. Student Public Interest Research Group of New Jersey, Inc. v. AT&T Bell Laboratories, 617 F.Supp. 1190, 1200 (D.N.J. 1985) (fact that defendant has ceased discharges does not eliminate need for civil penalties as deterrent both to defendant and others). In authorizing U.S. EPA to institute administrative proceedings against violators of RCRA and its implementing regulations pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, Congress intended to promote greater compliance with and enforcement of RCRA without resort to the federal courts. Nonetheless, if violators believe, as Defendants apparently do, that they can ignore U.S. EPA administrative orders until judicial enforcement actions are instituted, without running the risk of being assessed a substantial penalty, there will be no incentive to

comply with administrative orders. Congress did not create an administrative enforcement scheme only to have it frustrated this way.

As noted above, Section 3008(g) of RCRA, 42 U.S.C. §6928(g), provides for the imposition of up to \$25,000 per day of violation for any violation of RCRA.³ As the Fourth Circuit recently observed in Chesapeake Bay Foundation v. Gwaltney of Smithfield, 791 F.2d 304 (4th Cir. 1986), the maximum penalty exposure is the appropriate departure point for the court's analysis in establishing an appropriate penalty. In Gwaltney, the district court, while recognizing that the \$10,000 a day penalty for violations of the Clean Water Act was a "maximum penalty, not a mandatory one," calculated the defendant's maximum penalty, i.e. \$6.66 million, before it adjusted the penalty based on among other things, the factors outlined in U.S. EPA's Civil Penalty Policy. On appeal, the Court of Appeals upheld the district court's approach and stated:

The district court properly considered Gwaltney's days of violation in setting a maximum penalty of \$6.66 million for 666 days of violation. Within that framework the

³ Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), establishes the civil penalty for violations of RCRA.

(g) Civil penalty -- Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

court was permitted, in its discretion to craft an "appropriate" penalty.

Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield Ltd., 791 F.2d at 316.

Once the maximum penalty is established, that penalty may be mitigated based on "the seriousness of the violation and any good faith efforts to comply with applicable requirements." See United States v. T & S Brass, 27 ERC at 1227 (construing Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), which establishes criteria for administrative penalty assessments, as pending guidance for judicial assessments).⁴ Significantly, under U.S. EPA's interpretation of RCRA's penalty scheme, defendants bear the burden of proving that a downward adjustment of the penalty,

⁴ The T & S Brass factors are comparable to those which generally govern civil assessments in the absence of statutory guidance. For example, in United States v. Danube Carpet Mills, Inc., 540 F.Supp. 507 (N.D. Ga. 1982), aff'd 737 F.2d 988 (11th Cir. 1984), the Court identified five factors it would consider in setting a civil penalty under Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1):

(1) The injury to the public resulting from a violation; (2) the defendants' ability to pay penalties; (3) the good or bad faith of the defendant in violating the order; (4) the desire to eliminate the benefits derived by the defendant from its violative activities; and (5) the necessity of vindicating the authority of [the government] by deterring similar behavior by others.

540 F.Supp. at 51; See also United States v. Reader's Digest Association, 662 F.2d 955, 967 (3d Cir. 1981) cert. denied, 455 U.S. 908 (1982); United States v. J.B. Williams Co., Inc., 498 F.2d 414 (2d Cir. 1974); Phelps Dodge, 589 F.Supp. at 1362.

based on these mitigation considerations, is appropriate.⁵ As the agency charged with the responsibility of implementing RCRA, U.S. EPA's interpretation is entitled to substantial deference. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 839 (1984); Simmons v. Interstate Commerce Commission, 766 F.2d 1177 (7th Cir. 1985); Montana Power Co. v. EPA, 608 F.2d 334 (9th Cir. 1979). Notably, U.S. EPA's interpretation is in keeping with the general principle that the burden of proving entitlement to an exception or mitigation rests with the party claiming such entitlement. See, e.g., McCormack on Evidence 951 (E. Cleary 3d ed. 1984).

Defendants cannot credibly meet their burden of proof here. As discussed more fully below, Defendants paid absolutely no attention to the U.S. EPA Order; thus, the United States was compelled to expend its resources to seek enforcement of the U.S. EPA Order in this Court. Moreover, for months, Defendants have disregarded the Judgment Order of this Court. Defendants' conspicuous disregard of these two orders is, on its face, serious. Moreover, the seriousness of these violations is compounded by the important substantive nature of the actions Defendants failed to take and their complete lack of a good faith effort to comply.

⁵ See U.S. EPA's "RCRA Civil Penalty Policy," a copy of which is attached as Exhibit 1 to the Motion.

A. The Seriousness of the Violations and the Lack of Good Faith

The history of Defendants' actions before and since the filing of this action underscores the seriousness of the violations and Defendants' disrespect for the law.

After a full administrative hearing, Defendants were found to have improperly managed in numerous ways the hazardous wastes generated by the Aero Plating facility.⁶ Notwithstanding the serious nature of these conditions and the requirements imposed by the U.S. EPA Order to correct them, Defendants completely disregarded the Order. They did not submit an approvable closure plan to U.S. EPA or IEPA and, therefore, did not implement a closure of the facility that would assure protection of public health and the environment from the danger posed by the hazardous wastes remaining at the Aero Plating facility. They also did not pay the administrative penalties assessed in the U.S. EPA Order.

⁶The U.S. EPA Order, attached as Exhibit 2 to the Motion, contained, among others, the following findings of fact. The basement of Defendants' facility was contaminated with sludge containing cyanide, chromium, and nickel. Order, p. 7. Chromic rain, which is an acid that can react with cyanide to form lethal hydrogen cyanide gas, had dripped from the first floor into the basement. Order, p. 7. Emergency procedures had not been coordinated with police, fire departments, and other emergency personnel. Hazardous waste was stored in open containers and in tanks that were leaking or corroded. Written closure plans had not been prepared. Order, pp. 7 - 11. As of August 6, 1986, a portion of the facility had been leased to new tenants, even though the drums of hazardous waste from Defendants' operations were scattered throughout the facility, the floor along the east side of the building was contaminated, reactive hazardous wastes were stored haphazardly in the chemical room, the contaminated north plating line was still standing, and the new tenants were located in the same areas of the building as these contaminants. Order, p. 11.

As a result, the United States was compelled to bring this action.

Defendants' response to the requirements of the Judgment Order entered by this Court on October 28, 1987 has been similarly cavalier.

On October 16, 1987, just prior to the entry of the Judgment Order, Defendants submitted a so-called closure plan to IEPA.⁷ On December 10, 1987, IEPA informed Defendants by letter of the deficiencies in their submission and required that a revised document be re-submitted within 30 days. See Attachment to Gould Affidavit, attached as Exhibit 3 to the Motion. Defendants requested an extension until February 5, 1988 to submit the revised plan. Nevertheless, IEPA did not receive a revised closure plan until June 9, 1988. See Gould Affidavit, ¶9.

Clearly, until a closure plan is approved, no lawful closure of Defendants' facility can occur. As a result, public health and the environment have not yet been adequately protected from hazards posed by Defendants' former facility. Nonetheless, the premises formerly occupied by Aero Plating were relet to tenants unaware that they might be exposed to any risk.⁸ See Gould Affidavit, ¶4.

⁷This submission occurred more than three years after the administrative complaint and compliance order alleging defendants' failure to have provided such a plan was issued and more than one and a half years after the U.S. EPA Order requiring submission of a closure plan became final.

⁸The most egregious of these circumstances was probably the refurbishment of a portion of the space for use as a coffeehouse.

The discovery of this alarming situation prompted the United States to move for entry of a partial judgment on the pleadings, and to request inclusion of Provision #7 in the Judgment Order to require Defendants to act immediately to notify the new tenants and the public about the potentially hazardous conditions at Defendants' former facility. Nonetheless, Defendants made only the most token of efforts to comply.

By letter dated December 23, 1987 (attached as Exhibit 4 to the Motion), Ann L. Wallace, Assistant U.S. Attorney, notified Counsel for Defendants of Defendants' failure to comply with Provision 7 of the Judgment Order.⁹ Thereafter, by letter dated January 22, 1988, Defendants submitted to U.S. EPA a copy of the notice which they had posted on the premises. Provision 7(c) of the Judgment Order required Defendants to post notices on the premises to alert persons coming on to the premises that "the facility which was formerly located at said premises utilized hazardous materials and that it has not been shown that said facility was properly closed and that all hazardous wastes have been fully removed and properly disposed." Attached, as Exhibit 5 to the Motion, is a copy of the Notice placed at the premises by Defendants. As is apparent from examination of the Notice, it clearly fails to notify the public of these facts, but rather informs the public only that a "plating shop once occupied this building."

⁹The letter also notified Defendants' counsel of Defendants' failure to comply with Provisions 5 and 6, the money judgment provisions of the Order.

Moreover, contrary to Provision 7(b) of the Judgment Order, Defendants did not provide written notice by October 29, 1987 to the persons identified in Provision 7(a) of the Judgment Order regarding the use of hazardous wastes at the former Aero Plating facility or the failure to establish proper closure of the facility and proper removal and disposal of the hazardous wastes. Such notice was not provided until January 22, 1988 (almost three months later), when Counsel for the Defendants sent letters with the required information to two businesses occupying the former Aero Plating premises.

In addition, notwithstanding the requirement of Provision 7(d) of the Judgment Order that the Defendants "immediately contact the Illinois EPA" for directions regarding sampling and analysis at the facility, a meeting for this purpose was not held until April 7, 1988. See Gould Affidavit, ¶ 7.

Finally, neither Louis J. Maiorano, Sr. nor Louis J. Maiorano, Jr. paid the money judgments as ordered. Accordingly, on March 1, 1988, the Clerk of this Court issued a Citation in Supplemental Proceedings requiring Defendants to appear on April 1, 1988 with, among other documents, tax returns and banks account and stock records. The Citation in Supplemental Proceedings is attached as Exhibit 6 to this Motion. In response to the Citation, Defendants proposed to pay the money judgments with monthly payments. Attached, as Exhibits 7 and 8 to this Motion, are the payment schedules agreed upon by the

parties for payment of the judgments by Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. respectively.

The violations at issue here -- most notably, the failure to submit an approvable closure plan and thereafter to complete closure as required by the U.S. EPA Order and the Judgment Order, the failure to notify the public of the condition of the premises formerly occupied by the Aero Plating facility as required by the Judgment Order, and the failure to pay the required administrative penalties and money judgments in a timely manner -- demonstrate Defendants' continuing contempt for the environmental laws of the United States, for the administrative process that Congress mandated to control threats posed by hazardous waste to public health and the environment, and for the authority of this Court. These are serious violations that undermine a fundamental objective of RCRA -- that of "assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment." 42 U.S.C. § 6902(a)(4). They are serious also because the United States, and the Court, have had to spend considerable time, effort, and resources in an as-yet unsuccessful attempt to compel Defendants to comply with their legal obligations.

The unmistakable conclusion to be drawn from these facts is that Defendants simply do not regard compliance with the environmental laws or with judicial orders as their obligation. We believe that only the imposition of a substantial civil penalty, based on the maximum penalty provided under RCRA will

correct that view and deter Defendants, and others, from violating the environmental laws in the future.

B. Calculation of the Penalty

The following table identifies the violations for which a penalty should be assessed, the dates of violation, and the number of days of violation.

<u>Violation</u>	<u>Dates of Violation</u>	<u>Days of Violation</u>
Failure to submit closure plan pursuant to U.S. EPA Order.	5/12/86-10/16/87	515
Failure to respond to U.S. EPA information request.	2/20/87-10/23/87	270
Failure to submit revised closure plan	2/5/88-6/8/88	124

The total number of days of violation is 909 days. Accordingly, based on a \$25,000 per day of violation penalty, the maximum penalty Defendants could be assessed is \$22,725,000. We recognize that this figure is extremely large, but using a maximum penalty calculation as a starting point adds perspective to the Court's assessment of a penalty. As this analysis demonstrates, Defendants have violated the law for a substantial amount of time without regard to the consequences either to the public or the environment. In addition, the analysis demonstrates that Congress imposed a substantial maximum penalty in order to have a real deterrent effect -- clearly any more than a few days of violation results in a large penalty. We request that the Court assess a penalty against Defendants that takes into account their long history of environmental violations and

that bears a rational relationship to the maximum penalty allowed by the law. We believe that a penalty of not less than \$100,000 will satisfy these criteria. Moreover, a penalty of this size will send a clear message to the Defendants and to the regulated community that this Court views violations of RCRA as serious violations of law.

CONCLUSION


For the foregoing reasons, the United States respectfully requests that the Court assess a penalty against the Defendants in this action.

Respectfully submitted,

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Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

30 SEP 1986

REPLY TO THE ATTENTION OF: 5RA-14

MEMORANDUM

SUBJECT: Referral of Civil Litigation Package
for Louis J. Maiorano, Sr., an individual;
Louis J. Maiorano, Jr., an individual and
d/b/a Aero Plating Works, Inc.

FROM: Valdas V. Adamkus
Regional Administrator

TO: Thomas L. Adams, Jr.
Assistant Administrator for Enforcement
& Compliance Monitoring (LE-133)

I recommend the referral of the Maiorano matter to the Department of Justice for filing pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA).

A. Nature of the Case

This case involves the enforcement of an Administrative Law Judge (ALJ) decision initially entered on February 13, 1986, and revised on February 21, 1986. As of April 13, 1986, the Maioranos had not filed an appeal of the initial decision, and thereafter, the initial decision became a "final Agency action".

As detailed in the Litigation Report, Region V issued to the Maioranos an Administrative Complaint, Findings of Violation, and Order on September 7, 1984. The Maioranos answered denying the violations, asserting that Louis Maiorano Sr. was improperly impleaded as a party, that Louis J. Maiorano, Jr. is the president and sole stockholder of Aero Plating Works, Inc., and that the \$80,000 penalty was excessive. Thus, a hearing was held in Chicago, Illinois on July 30 and 31, 1985.

The Administrative Law Judge held that the Maioranos had violated RCRA and Illinois' hazardous waste regulations, that they were jointly and severally liable for a civil penalty in the amount of \$18,500 and that Louis J. Maiorano, Jr. was individually liable for an additional \$3,500 civil penalty. Among other things, the Maioranos were ordered to provide the Agency with a closure plan and to close the facility in accordance with an EPA approved closure plan.

The Maioranos have been notified of their obligation to comply with the final Agency Order, yet, the Maioranos have failed to pay the civil penalty and have failed to submit an approveable closure plan.

In other words, the substantive RCRA regulation violations are continuing, and have now been compounded by the Maioranos violation of the final Agency Order. The civil action proposed in this Litigation Report would seek a district court order requiring the Maioranos to fully comply with RCRA and state regulations, to close its facility in accordance with an EPA approved closure plan, and to pay a civil monetary penalty.

B. Cause of Action

U.S. EPA's authority to bring this action is based on Section 3008 of RCRA which authorizes the Administrator to seek civil injunctive relief and penalties for violations of the Agency's Subtitle C regulations and regulations of authorized State programs which govern owners and operators of hazardous waste management facilities.

C. Proposed Remedy

The objective of this litigation is to obtain a district court order requiring the Maioranos to comply fully with the substantive RCRA regulations, the terms and conditions of the ALJ decision, and to pay a civil monetary penalty.

D. Issues of National or Precedential Importance

There are no national nor significant precedential issues presently associated with this case.

E. Regional Contact Person

The Assistant Regional Counsel assigned to this case is Ellen Carpenter. She may be contacted at FTS 886-7937. Oliver Warnsley is the RCRA technical contact for this matter. He may be reached at FTS 886-6533.


Valdas V. Adamkus

U.S. ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
)
)
Louis J. Maiorano, Sr., an) REFERRAL DATA SHEET
individual; Louis J.)
Maiorano, Jr., an individual)
and d/b/a Aero Plating)
Works, Inc.)
)
_____)

1. Legal Basis for Proposed Action: Section 3008 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, 42 U.S.C. §6901 et seq.

2. Identity of Defendant:

Louis J. Maiorano, Sr.
1215 Saunders Road
Deerfield, Illinois 60015

Louis J. Maiorano, Jr.
422 Melvina
Palatine, Illinois 60067

Aero Plating Works, Inc.
1860 N. Elston Avenue
Chicago, Illinois 60622

3. Alleged Violations: A final Agency Order was issued requiring Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr. ("Respondents") to comply with Illinois' closure, manifest, and shipping regulations and to pay a penalty assessed for violations of RCRA and the state regulations. However, in violation of the Order, Respondents have failed to submit an approvable closure plan or pay the assessed penalty.

4. Proposed Relief: The Agency seeks an order requiring Respondents to immediately comply with all of the requirements of the Order and which would impose civil penalties pursuant to Section 3008(a), (c), and (g) of RCRA.

5. Recent Contacts with Defendant: On July 2, 1986, U.S. EPA, Region V, sent a letter to Respondents notifying them that the Administrative Law Judge's initial decision became a final Agency action on April 13, 1986. Respondents were also advised that failure to pay the \$22,000 penalty may result in the initiation of a judicial action.

6. Significance of Referral: Judicial enforcement of the final Agency Order is necessary to maintain the integrity of the Agency's enforcement program. The referral of this case is necessary to establish that the Government will not accept Respondents' failure to comply with the provisions of an Order entered subsequent to an administrative hearing.

7. Evidence of Violations: Documentary evidence to support the case includes the Agency's final Order, the U.S. EPA letter dated July 2, 1986, and an affidavit from Beverly Shorty, Regional Hearing Clerk stating that Respondents have not paid the assessed penalty. In addition, the federal technical contact and state inspector will be available to provide testimony on compliance with the substantive provisions of the Order.

8. Date Referral Request Appeared Necessary: September, 1986.

9. Date Regional Administrator Signed Referral Request:

30 SEP 1986

10. Identity of Lead Regional Personnel:

Ellen Carpenter (5CS-16)
Assistant Regional Counsel

Oliver Warnsley (5HE-12)
Environmental Protection Specialist

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

LITIGATION REPORT

Referral of civil action pursuant to Section 3008 of the Solid Waste Disposal Act (SWDA), as amended, 42 U.S.C. §6901, et seq. (also referred to as the Resource Conservation and Recovery Act (RCRA)).

Respondents: Louis J. Maiorano, Sr.
Louis J. Maiorano, Jr.
d/b/a Aero Plating Works, Inc.

Addresses: Louis J. Maiorano, Sr.
1215 Saunders Road
Deerfield, Illinois 60015

Louis J. Maiorano, Jr.
422 Melvina
Palatine, Illinois 60067

Aero Plating Works Inc.
1850 N. Elston Avenue
Chicago, Illinois 60622

Regional Contacts: Ellen Carpenter (5CS-16)
Assistant Regional Counsel
(312) 886-7937

Oliver Warnsley
Environmental Protection Specialist
(312) 886-6533

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I. Synopsis of the Case

A final Agency Order was issued in this case by Administrative Law Judge Gerald Harwood pursuant to a hearing held on an administrative Complaint. The hearing was held in Chicago, Illinois on July 30 and 31, 1985. A final Agency Order was entered in this matter requiring Louis J. Maiorano, Sr. and Louis J. Maiorano Jr. ("Respondents") to submit a closure plan and to comply with Illinois' closure, manifest, and shipping regulations. Respondents were also ordered to pay a penalty assessed for violations of the Resource Conservation and Recovery Act (RCRA) and the state regulations.^{1/} This case is referred to the United States Department of Justice to enforce the collection of the administrative penalty that was assessed against the Respondents and to enforce the substantive provisions of the Administrative Law Judge's decision. In addition, the Agency is seeking to obtain statutory penalties for failure to comply with a final Agency Order.

II. Statutory Basis of Authority

The statutory authority to file this action is found at §3008 of RCRA, 42 U.S.C. §6928, which provides:

(a) COMPLIANCE ORDER - (1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of

^{1/} RCRA, Section 3008(a)(2), 42 U.S.C. §6928(a)(2), authorizes U.S. EPA to enforce state regulations issued under authorized state programs where prior notice of the enforcement action is given to the state. Illinois was granted interim authorization on May 17, 1982, to administer and enforce hazardous waste program in lieu of the federal program.

any requirement of this subtitle, the Administrator may issue an order requiring compliance immediately or within a specified time period or the Administrator may commence a civil action in the United States District Court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing.--Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(c) Violation of compliance orders.--if a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with the order and the Administrator

may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State)....

(g) Civil penalty.--Any person who violates any requirements of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

The government may be awarded costs and interest on the judgment pursuant to 31 U.S.C. §3717.

Jurisdiction and venue in this matter are proper in the Northern District of Illinois pursuant to 42 U.S.C. §6928(a), and 28 U.S.C. §§1331, 1345, 1355 and 1391(b).

III. Description of Respondents

Respondents are individuals who own and operated an electroplating facility located at 1860 N. Elston Avenue, Chicago, Illinois. The facility, which plated chrome, is a "hazardous waste management facility" that is subject to regulation under the Resource Conservation and Recovery Act because listed hazardous wastes have been generated and stored and disposed of at the facility. The listed hazardous wastes identified at the facility include wastewater and treatment sludges from electroplating operations (F006), plating bath sludges where cyanides are used in the process (F008), and spent stripping and cleaning bath solutions where cyanides were used in the process (F009).

Louis J. Maiorano, Sr. owns the land and structures located at 1860 N. Elston Avenue. Louis J. Maiorano, Sr.

leased the property to Louis J. Maiorano, Jr. from January 2, 1979, to December 31, 1984. Louis J. Maiorano, Jr. is the president and sole shareholder of Aero Plating Works, Inc.

Aero Plating Works, Inc. was incorporated in Illinois on December 4, 1951. The corporate charter was involuntarily dissolved by the Illinois Secretary of State on December 1, 1980, for failure to file an annual report and pay franchise taxes. After the corporation was dissolved, Louis J. Maiorano, Jr. continued doing business under the name of Aero Plating Works, Inc. Production was discontinued at the facility in February or March, 1984 (TR - 491). The corporation was reinstated on August 31, 1984.

An administrative hearing was held on July 30 and 31, 1985. An initial decision was rendered by Administrative Law Judge Harwood. Respondents did not appeal the initial decision. The initial decision became a final Agency Order by operation of 40 C.F.R. §22.27(c). In his decision, Administrative Law Judge Harwood concluded that the performance standards (Section 3004) and the permitting requirements (Section 3005) of RCRA apply to both owners and operators of hazardous waste management facilities. Louis Maiorano Jr. and Louis Maiorano Sr. were held responsible for complying with the requirements of the hazardous waste regulations and a penalty totaling \$22,000 was assessed.

The Respondants' legal counsel is:

Bertram A. Stone
Stone, Pogrud & Korey
221 North LaSalle St., 28th Floor
Chicago, Illinois 60601
(312) 782-3636

No other potential Respondents have been identified in this matter.

IV. Description of Violations

On September 7, 1984, an Administrative Complaint, Findings of Violation, and Order were issued to Respondents for violation of many interim status hazardous waste management regulations (Attachment A). The Administrative Order contained a penalty assessment of \$80,000.00 and a requirement to submit a closure plan, to close the facility, and to prepare manifests and comply with other requirements for shipping hazardous waste off-site. Respondents answered denying the violations, asserting that Louis Maiorano, Sr. was improperly impleaded as a party, that Louis Maiorano, Jr. is the president and sole stockholder of Aero Plating Works, Inc., and that the \$80,000 penalty was unwarranted or not assessed in accordance with the published calculation matrix.

A hearing was held in Chicago, Illinois on July 30 and 31, 1985. An initial decision was entered on the matter on February 13, 1986 (Attachment C). The initial decision assessed a \$3,500 penalty against Louis Maiorano, Jr., individually, and an \$10,500 penalty was assessed against Mr. Louis Maiorano Sr. and Mr. Louis Maiorano, Jr., jointly and severally. The penalty was to

be paid within sixty days of service of the final order. The initial decision also required Respondents, inter alia, to submit to U.S. EPA a closure plan which meets the standards contained in 35 Ill. Adm. Code §725.210 within thirty days of service of the Order, close the Aero Plating Works facility in accordance with a U.S. EPA approved closure plan, prepare manifests, and comply with certain requirements for shipping hazardous wastes off-site. On February 21, 1986, one provision of the initial decision, not at issue here, was modified.

The record reflects that on February 24, 1986, the initial decision was served upon the Respondents. Respondents did not file an appeal of the initial decision within forty-five days of its receipt and therefore, the initial decision became a final order of the Administrator by operation of 40 C.F.R. §22.27(c).

Respondents were notified on July 2, 1986, that the initial decision became a final Agency action on April 13, 1986. They were also notified that the failure to pay the assessed penalty may result in the initiation of a judicial action for collection of the penalties, costs and interest. (Attachment []).

Respondents have not paid the assessed penalty, and have failed to submit an approvable closure plan. Therefore, an action pursuant to §3008 of RCRA to enforce compliance with the terms of the Agency's final Order and for additional penalties should be initiated.

V. Enforcement History of Respondents

Pursuant to the hearing held in July, 1985, Administrative Law Judge Harwood entered a decision in this matter containing uncontested findings of fact which is evidence of Respondents history of continuing violations and disregard for notices of noncompliance. These uncontested findings of fact include:

- (a) Cyanide, chromium and nickel were contaminants identified in the sludge from the basement;
- (b) A low pH "chromic rain" from the first floor operations dripped into the basement between November 19, 1980, and sometime in 1982;
- (c) Cyanide will react with an acid to form hydrogen cyanide gas which can be lethal to humans upon inhalation;
- (d) RCRA inspections conducted by Illinois EPA in September, 1983, and January, 1984, revealed that the Part A application had not been submitted and that the Elston Avenue facility was in general noncompliance with the treatment, storage, and disposal requirements of the authorized state's hazardous waste management regulations;
- (e) Respondents were informed of the violations detected during the RCRA inspections of September 21, 1983, and February 22, 1984, by letters, dated September 21, 1983 and February 22, 1984, and during an enforcement conference held on March 7, 1984; and
- (f) As of August 6, 1986, a portion of the facility was leased to new tenants, even though drums of hazardous waste from Respondents' operations were scattered through out the facility, the floor along the east side of the building was contaminated, reactive hazardous wastes were stored haphazardly in the chemical room, and the contaminated north plating line was still standing, and the new tenants, were located in the same areas of the building as these contaminants.

The Order entered in this matter required Respondents to submit an approvable closure plan to U.S. EPA and pay a penalty. The Order became final on April 13, 1986. Respondents have not paid the assessed penalty nor have they submitted an approvable closure plan.

A RCRA inspection of the facility located at 1860 N. Elston Avenue will be conducted by the Illinois EPA within the next month. The inspection report will confirm the current status of the facility.

Prior enforcement actions and investigations were conducted by the Metropolitan Sanitary District of Greater Chicago (MSD) from 1978 through 1982. MSD conducted numerous inspections and held enforcement conferences to address the Respondents failure to provide suitable sampling and gauging facilities, exceedances of effluent limits established for the sewerage system, and failure to comply with reporting requirements.

VI. Relief Requested

The initial decision entered in this matter, pursuant to an administrative hearing, became a final Agency Order on April 13, 1986. The final Order requires Respondents, inter alia, to submit an approvable closure plan within thirty days of service of the Order and to pay a penalty within sixty days of service of the Order. Respondents have failed to comply with these provisions of the Agency's final Order. Because Respondents have failed to pay the assessed penalty, no basis exists for

assuming that Respondents have complied with the other provisions of the Order. The Respondents history of continuing violations, previously described in Section V, and utter disregard for the Agency's final Order entered in this matter are the bases for filing a Complaint by the United States. Failure to pursue this action in a timely manner would jeopardize the integrity of the Agency's enforcement program.

The Agency seeks a court order enjoining Respondents to perform the closure requirements and pay the assessed penalty of \$22,000 as ordered by this Agency, and to pay an additional penalty not to exceed \$25,000 per day for each new day of continued noncompliance with the Agency's final Order. There is no alternative course of action available.

VII. Present Financial Condition of Respondents

The financial condition of the Respondents is not clear but it is the Respondents' burden to establish an inability to pay the assessed penalty. Judge Harwood assessed a total penalty of \$22,000 for the violations existing at the facility. A penalty of \$18,500 was assessed against Louis Maiorano, Sr., jointly and severally with Louis Maiorano, Jr. An additional \$3,500 penalty was assessed against Louis J. Maiorano, Jr., individually.

Based on the evidence presented at the hearing, Administrative Law Judge Harwood determined that a penalty totaling \$37,500 should be assessed for the violations detected at the facility. Judge Harwood found that Louis Maiorano, Sr. failed to establish that he had insufficient assets and income to pay the penalty

and was held jointly and severally liable with Maiorano, Jr. for \$18,500 of the penalty. Louis Maiorano, Jr. was held to be individually liable for the remainder of the \$37,500 penalty. However, Judge Harwood found that the evidence presented regarding the inability of Louis Maiorano, Jr. to pay the penalty warranted a 40% reduction in the penalty. Therefore, the penalty was reduced from \$37,500 to \$22,000 and the individual liability of Louis Maiorano, Jr. is \$3,500.

Aero Plating Works, Inc. is no longer in operation.

VIII. Major Issues

The Agency is seeking to bring Respondents' facility into compliance with the hazardous waste regulations, to require Respondents to pay the penalty assessed in the agency's final Order entered in this matter, and to penalize Respondents for failure to comply with the requirements of the Agency's regulatory scheme. This action is necessary to maintain the integrity of the Agency's program established for enforcing the hazardous waste regulations. The Administrative Law Judge's decision sets forth the defenses Respondents raised in this matter. However, the Respondents have not raised issues of national or precedential significance.

IX. Significance of Referral

The Respondents history of continuing violations, as described in Section V, is one of the primary reasons for referring this matter. Another significant factor is the Respondents failure to respond to environmental notices of noncompliances and orders. Respondents were notified by the Illinois EPA of

the RCRA violations detected during the 1983 and 1984 inspections of the facility through letters from Illinois EPA dated September 21, 1983, and February 22, 1984, and at an enforcement conference held on March 7, 1984. Respondents participated in the contested hearing initiated by administrative Complaint and held on July 30, and 31, 1985. Respondents received the Administrative Law Judge's decision entered in this matter in February, 1986. Respondents received notice from U.S. EPA on July 7, 1986, advising them that the initial decision became a final Agency Order on April 13, 1986, and that failure to pay the penalty assessed may result in the initiation of a judicial action for collection of the penalties. Nonetheless, the Respondents have failed to comply with the closure requirements ordered by the Administrative Law Judge and have failed to pay the assessed penalty. Respondents continue to disregard the Agency's final Order. Further action is necessary to compel compliance by these Respondents. The failure to pursue the judicial remedy provided in § 3008 would allow the substantive RCRA regulation violations to continue in blatant disregard of a final Agency Order. Failure to pursue the judicial remedy would also have a serious adverse impact on the effectiveness of enforcing the Agency's final Orders entered against other members of the regulated community.

This referral arises from the failure of the Respondents to comply with a final Order issued by the Agency subsequent to an administrative hearing held on July 30 and 31, 1985.

Such violation is considered a very serious matter and pursuing judicial action in this case is crucial to the Agency's ability to enforce the hazardous waste management program.

X. Litigation Strategy

a. Settlement Potential

There is a possibility of settlement once this company fully understands that it may be liable for additional penalties for failure to comply with the Administrative Order. As previously discussed in Section IX, Respondents have a history of refusing to comply with environmental notices of noncompliance and orders. However, the filing of a Complaint by the United States indicating the Government's intent to initiate action may be sufficient threat to move the Respondents into compliance.

b. Discovery

Very little, if any, discovery is necessary for this action. This matter may be resolved by way of motion and affidavit for summary judgment without necessity for engaging in discovery.

c. Potential for Summary Judgment

There is a good potential for summary judgment. The Regional staff anticipate developing a motion for summary judgment with supporting affidavits, as indicated in the appended case plan.

d. Identity of Potential Witnesses

1. Government Witnesses

In order to resolve this case by summary judgment motion,

affidavits of the following persons should be obtained. A summary of their expected testimony is presented below:

John Maher, Illinois EPA, District Office Inspector, 1701 S. First St., Maywood, Ill. 60153, (312) 345-9780 will testify to the current compliance status of the facility.

Oliver Warnsley, Environmental Protection Specialist, RCRA Enforcement Section, U.S. EPA, 230 S. Dearborn, Chicago, Ill. 60604, (312) 886-6533. Mr. Warnsley will testify that the Respondents have failed to submit a closure plan which meets the standards for such plans contained in 35 Ill. Adm. Code §725.210 as required by the Agency's final Order.

Beverly Shorty, Regional Hearing Clerk, U.S. EPA, 230 South Dearborn Street, Chicago, Ill. 60604, (312) 353-1669. According to the initial decision of Judge Harwood, Respondents were required to remit the penalty payment to the Regional Hearing Clerk within sixty days of service of the Order upon Respondents. Ms. Shorty can testify that as Regional Hearing Clerk she did not receive the penalty payment from either Respondent. Ms. Shorty can further testify that she has determined that the payment was never made to anyone within the Financial Management Branch of U.S. EPA-Region V (Attachment G).

2. Respondents' Witnesses

Respondents may testify on their own behalf. Louis Maiorano, Jr. and Louis Maiorano, Sr. testified at the administrative hearing. The transcript of the hearing is available.

e. Elements of Proof and Evidence
and Need for Evidentiary Support

Section 3008(a)(1), 42 U.S.C. 6928(a)(1), requires that, prior to issuing an administrative order or commencing civil litigation, the Administrator determine that a person has violated, or is in violation of, any requirement of subtitle C of RCRA. Once the Administrator makes such a determination he is free to pursue a civil or administration action to seek correction of the violation and assesement of penalties as specified elsewhere in Section 3008, 42 U.S.C. 6928. The final Agency Order entered in the administrative action against Respondents is prima facie evidence of the Administrator's determination that such violation has occurred.

Pursuant to Section 3008(a)(1) of RCRA, the Administrator may initiate an enforcement action for injunctive relief to compel compliance with the terms of a final Agency Order. In addition, pursuant to Section 3008(c) and (g), noncompliance with a final Agency Order subjects the violator to a civil penalty of not more than \$25,000 for each day of continued noncompliance.

Proof relating to Respondents continued noncompliance with the terms of the final Agency action will require (1) a demonstration that a final Agency action has been entered; (2) that the final Agency action requires Respondents to pay a penalty and to submit an approvable closure plan; and (3) that Respondents failed to carry out those activities.

A certified copy of the Administrative Law Judge's initial decision and the Administrator's final decision in the Administrative hearing are prima facie evidence of the elements underlying the request for injunctive relief.

In addition, the initial decision identifies those activities which Respondents were required to undertake.

Proof of Respondents continued noncompliance with the terms of the initial decision will require testimony, either live or by way of affidavit, of the Respondents failure to submit an approvable closure plan and pay the penalty assessment. (See Section X. d. 1.)

f. Anticipated Issues

Respondents may argue that Louis J. Maiorano, Sr. was improperly impleaded and that Aero Plating Works, Inc. was a de facto corporation which should shield Louis J. Maiorano, Jr., from any personal liability. Both of these issues were raised at the administrative hearing and addressed by Judge Harwood in his decision. Respondents failed to appeal the initial decision which then became a final Agency order by operation of 40 C.F.R. §22.27(c). Therefore, Respondents are now estopped from raising these issues in this action.

Administrative Law Judge Harwood assessed a penalty totaling \$22,000 in this matter. Louis Maiorano, Jr. was assessed a penalty of \$3,500, individually. Louis Maiorano, Jr. and Louis Maiorano, Sr. were assessed \$18,500, jointly and severally.

Respondents may be expected to argue that they are without substantial funds to pay a civil penalty of the amount assessed. However, the penalty assessed against the Respondents took into consideration the evidence Respondents presented at the hearing on this matter. Administrative Law Judge Harwood found that Louis Maiorano, Sr. failed to establish his inability to pay. The penalty assessed took into consideration any inability of Louis Maiorano, Jr. to pay the penalty and was accordingly reduced from \$37,000 to \$22,000. The assessment of penalties is a discretionary function. Any review of the penalty assessment in this matter should be limited to a review of whether or not the Administrative Law Judge's assessment, as indicated in the record, was arbitrary and capricious. The record reflects that the assessment of the penalties against Respondents was not arbitrary and capricious.

g. Resource Commitments

It is not anticipated that this action would require a great deal of Agency and Justice Department resources. It is anticipated that the resource needs of this case would involve primarily the Office of Regional Counsel and the Waste Management Division, who would have primary responsibility for generating the documents to support a summary judgment motion.

If this case were to proceed to trial, it is estimated that the case would require one month of attorney time to prepare and to coordinate, and two weeks of technical time. The trial itself would not require more than two days.

XI. Index of Attachments

- A. Administrative Complaint, Findings of Violation and Order, Docket No. V-W-84-R-071, September 7, 1984
- B. Response to Complaint, Docket No. V-W-84-R-071, March 14, 1985
- C. Initial Decision, Docket No. V-W-84-R-071, Revision to Decision, Docket No. V-W-84-R-071
- D. Proof of Service of Initial Decision upon Respondents
- E. Notice of Final Agency Action, July 2, 1986
- F. Proof of Service of Notice of Final Agency Action.
- G. Affidavit of Beverly Shorty
- H. Draft Complaint for civil Action
- I. Draft Notice Letters to Respondents
- J. Draft Notice Letter to State of Illinois
- K. Case Plan
- L. Other Relevant Information

ATTACHMENT A

V-V- 84 R-071

DOCKET NO.

COMPLAINT AND
COMPLIANCE ORDER

RECEIVED
SEP 16 1984

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

This Complaint is filed pursuant to Section 3008(a)(1) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. §6928(a)(1)), and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director of the Waste Management Division, Region V, United States Environmental Protection Agency (hereinafter U.S. EPA). The Respondents are Louis J. Maiorano, Sr., and Louis J. Maiorano, Jr., d/b/a Aero Plating Works (hereinafter Respondents or Aero Plating Works).

This Complaint is based on information available to U.S. EPA including compliance inspections conducted by the Illinois Environmental Protection Agency (IEPA) on January 24, 1984, and September 15, 1983. At the time of the inspections, violations of applicable State and Federal statutes and regulations were identified. Accordingly, this Compliance Order enforces both Federal and State regulations as applicable.

Pursuant to 42 U.S.C. 6928(a)(1), and based on information cited above, it has been determined that Aero Plating Works is in violation of Subtitle C of RCRA, Sections 3002, 3004, 3005 and 3010 (42 U.S.C. §6922, and §6924, §6925, and

§6930 respectively), and 40 CFR §270.10(e). In addition, Aero Plating Works is in violation of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1982, Ch. 111 1/2, §1001 et seq., as amended, and regulations adopted by the Illinois Pollution Control Board, including 35 Ill. Adm. Code §700.105(a)(2), §725.113, §725.115, §725.116, §725.132, §725.135, §725.137, §725.151, §725.152, §725.153, §725.155, §725.173, §725.175, §725.212, §725.213, §725.215, §725.242, §725.243, §725.273, §725.274, §725.292, §725.294.

JURISDICTION

Jurisdiction for this action is conferred upon U.S. EPA by Sections 1006(a), 2002(a)(1), 3006(b) and 3008(a)(2) of RCRA (42 U.S.C. §6905(a), §6912(a)(1), §6926(b) and §6928(a)(2), respectively).

The Administrator of U.S. EPA granted the State of Illinois interim authorization to administer a hazardous waste program pursuant to Section 3006(b) of RCRA (42 U.S.C. §6916(b)) on May 17, 1982 (47 Fed. Reg. 21,043). The State regulations applicable to this authorization are 35 Ill. Adm. Code Part 720 et seq., and Section 3008(a)(2) of RCRA (42 U.S.C. §6928(a)(2)) which provide that the Administrator may enforce State regulations in States authorized to administer a hazardous waste program under Section 3006(b). U.S. EPA has provided notice of this action to the State of Illinois.

DETERMINATIONS

1. Respondents owned and operated an electroplating facility located at 1860 N. Elston Avenue, Chicago, Illinois 60622.

2. Section 3005 of Subtitle C of RCRA (42 U.S.C. §6925) provides in part, that:

"the Administrator (of the Environmental Protection Agency) shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. (After the effective date of the regulations) the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit." [Material in parenthesis added.]

3. Regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste to have a permit issued pursuant to Section 3005 (42 U.S.C. §6925) were promulgated by the Administrator on May 19, 1980, and are codified at 40 CFR Parts 124 and 270. The effective date of these regulations is November 19, 1980.

4. Section 3005(e) of RCRA (42 U.S.C. §6925(e)) provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition on the permit application, provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of the Act (42 U.S.C. §6930(a)) concerning notification of hazardous waste activity have been complied with; and (3) application for a permit has been made. This statutory authority to operate, pending final action on the permit, is known as interim status. U.S. EPA regulations implementing these provisions are found at 40 CFR Parts 265 and 270.

5. Section 3010(a) of RCRA (42 U.S.C. 6930(a)) provides in part that:

"Not later than ninety days after promulgation of regulations under section 3001 identifying by its characteristics or listing any substance as hazardous waste subject to this subtitle, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person... No identified or listed hazardous waste subject to this subtitle may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection."

6. Since November 19, 1980, Respondents have stored wastes which have been identified or listed as hazardous waste under Section 3001 of RCRA (42 U.S.C. §6921), and 35 Ill. Adm. Code Part 721, without a permit and without having achieved interim status, in violation of Section 3005(a) of RCRA. Interim status was not achieved because:

(1) Respondents failed to submit Part A of the application for a permit by November 19, 1980, as required by Section 3005 of RCRA, and (2) Respondents failed to submit a proper notification of hazardous waste activity as required by Section 3010 of RCRA.

Respondents filed a §3010 notification of hazardous waste activity, with U.S. EPA, dated August 19, 1981, which stated that Aero Plating Works was a generator of hazardous waste. However, the Illinois Environmental Protection Agency, at inspections on September 15, 1983, and January 24, 1984, found that the facility was operating both as a generator and as a treatment/storage/disposal facility.

At both inspections, Respondents were found to be storing hazardous waste for a period in excess of 90 days (35 Ill. Adm. Code §722.134), in quantities

greater than 1000 kg. (35 Ill. Adm. Code §721.105); and in excess of 90 days in a manufacturing process unit which ceased to be operated for manufacturing (35 Ill. Adm. Code §721.104(c)).

7. Waste from Respondents electroplating operation stored at the Elston Avenue facility were found to be listed hazardous wastes F007, F008 and F009 (35 Ill. Adm. Code §721.131). These wastes are spent cyanide plating bath solutions (F007), plating bath sludges where cyanides are used in the process (F008) and spent stripping and cleaning bath solutions where cyanides are used in the process (F009). Samples taken by IEPA during the September, 1983, and January 1984 inspections, and samples taken by the Metropolitan Sanitary District, in December of 1983, indicate that cyanide bearing wastes are stored on the premises. The samples, which were taken from various open drums, vats, sludge piles, and discontinued plating tanks were found to contain a wide range of cyanide concentrations (from less than 6 parts per million (ppm) to more than 11,000 ppm cyanide). Therefore, Respondents have stored listed hazardous wastes F007, and/or F008, and/or F009, after November 19, 1980.

8. Wastes stored at the Elston Avenue facility were found to be hazardous due to the EP toxicity characteristic for chromium (35 Ill. Adm. Code §721.124). Waste samples taken by IEPA on September 15, 1983, were found to be EP toxic for chromium. Specifically, waste stored in an open drum in the basement was found to contain 8.5 milligrams per liter (mg/l) chromium, and waste stored in an open vat along the north wall of the basement was found to contain 22 mg/l chromium. Therefore, Respondent has stored EP toxic hazardous waste after November 19, 1980.

9. On September 15, 1983, representatives of the IEPA inspected Respondents Elston Avenue facility, to determine compliance with the Illinois Environmental

Protection Act, Ill. Rev. Stat. 1982, Ch. 111 1/2, §1001 et seq., as amended, and regulations adopted by the Illinois Pollution Control Board, including 35 Ill. Adm. Code Part 725. Numerous violations were found during the inspection as set forth below:

- a. Failure to submit Part A of the application for a permit, as required by 35 Ill. Adm. Code §700.105(a)(2).
- b. Failure to conduct a general waste analysis, in accordance with a waste analysis plan, as required by 35 Ill. Adm. Code §725.113(a) and (b).
- c. Failure to comply with the general facility inspection requirements of 35 Ill. Adm. Code §725.115(a), (b) and (d).
- d. Failure to provide personnel training, as required by 35 Ill. Adm. Code §725.116(a).
- e. Failure to maintain personnel training records, as required by 35 Ill. Adm. Code §725.116(d).
- f. Failure to equip the facility with spill control and emergency equipment, as required by 35 Ill. Adm. Code §725.132(c).
- g. Failure to maintain adequate aisle space, as required by 35 Ill. Adm. Code §725.135.
- h. Failure to make arrangements with local emergency authorities, as required by 35 Ill. Adm. Code §725.137.
- i. Failure to have a contingency plan, as required by 35 Ill. Adm. Code §725.151.
- j. Failure to designate an emergency coordinator, as required by 35 Ill. Adm. Code §725.155.
- k. Failure to maintain a written operating record, as required by 35 Ill. Adm. Code §725.173.
- l. Failure to prepare an annual report, as required by 35 Ill. Adm. Code §725.175.
- m. Failure to have a written closure plan, as required by 35 Ill. Adm. Code §725.212.
- n. Failure to provide a written estimate of the cost of closing the facility, as required by 35 Ill. Adm. Code §725.242.

- o. Failure to establish financial assurance for closure of the facility, as required by 35 Ill. Adm. Code §725.243.
- p. Failure to store hazardous waste in closed containers, as required by 35 Ill. Adm. Code §725.273.
- q. Failure to inspect hazardous waste containers weekly, as required by 35 Ill. Adm. Code §725.274.
- r. Failure to store hazardous waste in tanks which will not leak, corrode, etc., as required by 35 Ill. Adm. Code §725.292(b).
- s. Failure to maintain at least 2 feet of freeboard at uncovered hazardous waste tanks, as required by 35 Ill. Adm. Code §725.292(c).
- t. Failure to inspect hazardous waste storage tanks, as required by 35 Ill. Adm. Code §725.294.

In a Compliance Inquiry Letter dated September 21, 1983, IEPA informed the Respondents of these violations.

10. On January 24, 1984, representatives of the IEPA inspected Respondents Elston Avenue facility, to determine compliance with the Illinois Environmental Protection Act, Ill. Rev. Stat. 1982, Ch. 111 1/2, §1001 et seq., as amended and regulations adopted by the Illinois Pollution Control Board, including 35 Ill. Adm. Code §725. Numerous violations were found during the inspection as set forth below:

- a. Failure to submit Part A of the application for a permit, as required by 35 Ill. Adm. Code §700.105(a)(2).
- b. Failure to conduct a general waste analysis, in accordance with a waste analysis plan, as required by 35 Ill. Adm. Code §725.113(a) and (b).
- c. Failure to comply with the general facility inspection requirements of 35 Ill. Adm. Code §725.115(a), (b) and (d).
- d. Failure to provide personnel training, as required by 35 Ill. Adm. Code §725.116(a).
- e. Failure to maintain personnel training records, as required by 35 Ill. Adm. Code §725.116(d).

- f. Failure to list spill control and emergency equipment in the contingency plan as required by 35 III. Adm. Code §725.152(e).
- g. Failure to maintain adequate aisle space, as required by 35 III. Adm. Code §725.135.
- h. Failure to submit copies of the contingency plan to local emergency authorities, as required by 35 III. Adm. Code §725.153.
- i. Failure to include an evacuation plan in the contingency plan, as required by 35 III. Adm. Code §725.152(f).
- j. Failure to maintain a written operating record, as required by 35 III. Adm. Code §725.173.
- k. Failure to prepare a biennial or annual report, as required by 35 III. Adm. Code §725.175.
- l. Failure to have a written closure plan, as required by 35 III. Adm. Code §725.212.
- m. Failure to provide a written estimate of the cost of closing the facility, as required by 35 III. Adm. Code §725.242.
- n. Failure to establish financial assurance for closure of the facility, as required by 35 III. Adm. Code §725.243.
- o. Failure to store hazardous waste in closed containers, as required by 35 III. Adm. Code §725.273.
- p. Failure to inspect hazardous waste containers weekly, as required by 35 III. Adm. Code §725.274.

In an Enforcement Notice Letter, dated February 22, 1984, and during an enforcement conference on March 7, 1984, IEPA informed the Respondent of these violations.

11. During the September 15, 1983, inspection 8 discontinued plating tanks were observed along the east wall of the main floor. Sludge sampled from one of the tanks was found to be listed hazardous waste F008 (35 III. Adm. Code §721.131) as discussed in item 7 above. During the January 24, 1984 inspection, it was observed that four of the discontinued plating tanks had been removed from the location at which they had been observed during

the September 15, 1983, inspection. Mr. Louis Maiorano Jr. stated that 4 of the plating tanks containing F008 hazardous waste had been disposed of with the general refuse (The sludge from the tanks was said to be stored on site in 55-gallon drums). Therefore, respondents are in violation of the requirements for facility closure as follows:

- a. Failure to comply with the requirements of 35 Ill. Adm. Code § 725.213(b) to complete closure in accordance with an approved closure plan.
- b. Failure to comply with the requirements of 35 Ill. Adm. Code § 725.215 to provide certification of facility closure by an independent registered professional engineer.

12. On August 6, 1984 and August 28, 1984, representatives of IEPA conducted a reinspection of the Elston Avenue facility and discovered that the building had been leased to another business entity. Approximately 60 drums of hazardous waste from Aero Plating Works has been removed to the "Chemical Room" of the building and the door to the room is padlocked. In addition, three filled wastewater treatment tanks and approximately ten plating tanks, some of which contained plating sludges, were left in the main part of the building in an area leased to the new business enterprise. Plating waste sludges and other debris were observed on the floor in the main part of the building.

ORDER AND CONDITIONS
FOR CONTINUED OPERATION OR CLOSURE

1. Respondents having been initially determined to be in violation of Sections 3002, 3005, and 3010 of RCRA and 35 Ill. Adm. Code Part 725, the following compliance order pursuant to Section 3008 of RCRA (42 U.S.C. §6928(a)(1)) is entered:

- a. Respondent shall, within thirty (30) days of receipt of this order, submit to U.S. EPA a closure plan for the facility. The plan shall be prepared in accordance with the standards for such plans contained in 35 Ill. Adm. Code §725.210, and shall detail the activities to be accomplished by the Respondents to remove and properly dispose of, or otherwise handle the hazardous wastes at the facility. U.S. EPA will approve, disapprove, or modify this plan.
- b. Within 30 days of U.S. EPA approval of the closure plan, Respondents shall complete closure of the facility, in accordance with the approved closure plan and shall submit a certification of closure, as required by 35 Ill. Adm. Code §725.215.
- c. Respondents shall comply immediately with the following requirements:
 1. Prepare manifests prior to the off site transportation of hazardous waste as required by 35 Ill. Adm. Code §722.120(a).
 2. Package hazardous wastes according to applicable Department of Transportation regulations (49 CFR Parts 173, 178 and 179) prior to transportation off site as required by 35 Ill. Adm. Code §722.130.
 3. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (49 CFR Part 172) prior to transportation off site as required by 35 Ill. Adm. Code §722.131.

4. Prior to shipping hazardous waste off site, mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code §722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal.
If found, contact the nearest police or public safety
authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____ :
Manifest Document Number _____ :

5. Offer the transporter placards according to Department of Transportation regulations (49 CFR Part 172, Subpart F) as required by 35 Ill. Adm. Code §722.133.
- d. Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of RCRA (42 U.S.C. §6973) or any other applicable statutory authority, should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at the facility may present an imminent and substantial endangerment to human health or the environment.
 - e. The Respondents shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted not later than forty-five (45) days from receipt of this Order to the U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois 60604, Attention: Technical, Permits, and Compliance Section.

ASSESSMENT OF PENALTY

Pursuant to Section 3008(c) and (g) of RCRA, the U.S. EPA assesses a penalty of Eighty Thousand Dollars (\$80,000) against the Respondents for the violations noted above, including violations disclosed during inspections of September 15, 1983, January 24, 1984, and August 6 and 20, 1984. The proposed penalty has been set at the indicated level based upon an analysis of the seriousness of the violations cited herein, and the conduct of the Respondents.

Payment shall be submitted within 60 days of entry of this Order, in the form of a certified or cashier's check made payable to the Treasury of the United States of America and remitted to Ms. Mary Langer, (5C-16), Regional Hearing Clerk, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois 60604.

Failure to comply with any requirement of this Order shall subject the Respondents to liability for a civil penalty of not more than \$25,000.00 per day for each day such violations occur.

NOTICE OF OPPORTUNITY FOR HEARING

The above named Respondents are hereby notified that the above Order may become final, or a Default Order entered upon motion, unless said persons have requested in writing a hearing not later than 30 days from the date this Order is served. You have the right to request a hearing, to contest any material factual allegation set forth in the Complaint or the appropriateness of any proposed penalty.

To avoid having the Compliance Order become final without further proceedings, you must file a written answer to this Complaint with the Regional Hearing Clerk, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604,

within 30 days of your receipt of this notice. A copy of this answer and any subsequent document filed in this action should be sent to the Office of Regional Counsel at the same address to the attention of Ms. Babette J. Neuberger, Assistant Regional Counsel.

Respondents' answer should clearly and directly admit, deny, or explain each of the factual allegations of which Respondents have any knowledge. Said answer should contain: (1) a definite statement of the facts, circumstances or arguments which constitute the grounds of defense; and (2) a concise statement of the facts which you intend to place at issue. The denial of any material fact or the raising of any affirmative defense shall be considered as a request for a hearing.

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits accompanies this Complaint (40 CFR Part 22; 45 Fed. Reg. 24,367 (1980), as amended by 45 Fed. Reg. 79,898 (1980). These regulations are applicable to all proceedings to this administrative action including the filing of any answer.

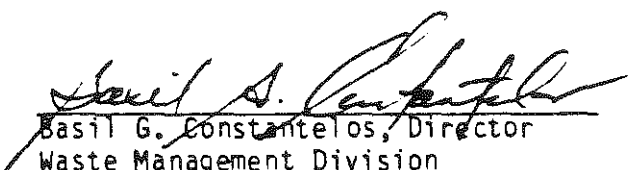
SETTLEMENT CONFERENCE

Whether or not you request a hearing, you may confer informally with U.S. EPA concerning (1) whether the alleged violations in fact occurred as set forth above, or (2) the appropriateness of the compliance schedule or penalty, if any.

You may request an informal settlement conference at any time by contacting Mr. Wayne Pearson, at the above named address, telephone number (312) 886-1772.

However, any such request will not effect the thirty day time limit for responding with an answer to this Complaint and requesting a formal hearing on the violations alleged herein. U.S. EPA encourages all parties to pursue the possibilities of settlement through informal conferences.

DATED this 7th day of September, 1984.


Basil G. Constantelos, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing Complaint to be served upon the persons designated below on the date below, by causing said copies to be deposited in the U.S. Mail, First Class and certified return receipt requested, postage prepaid, at Chicago, Illinois in envelopes addressed to:

Mr. Louis J. Maiorano, Sr.
d/b/a Aero Plating Works
1860 N. Elston Avenue
Chicago, Illinois 60622

Mr. Louis J. Maiorano, Jr.
d/b/a Aero Plating Works
1860 N. Elston Avenue
Chicago, Illinois 60622

Mr. Louis Maiorano
422 Millvalley Street
Palatine, Illinois 60067

Mr. Louis J. Maiorano, Sr.
1215 Sanders Road
Deerfield, Illinois

I have further caused the original of the Complaint and this certification of service to be served in the office of the Regional Hearing Clerk located in the Office of Regional Counsel, U.S. EPA, Region V at 230 South Dearborn Street, Chicago, Illinois 60604, on the date below.

These are said persons last known addresses to the subscriber.

Dated this 10th day of September, 1984.

Denise M. Reape
Denise Reape, Secretary
Technical, Permits, and
Compliance Section

ATTACHMENT B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF

LOUIS J. MAIORANO, SR.,
LOUIS J. MAIORANO, JR.,
d/b/a AERO PLATING WORKS
ILD 005125836

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Docket No. V-W-84R-071

RESPONSE TO COMPLAINT

PREAMBLE

The preamble of paragraph I of the Complaint herein filed by the United States Environmental Protection, Region V is erroneous as to the designation of the Respondents. Louis J. Maiorano, Sr. was the principal operating officer of Aero Plating Works, Inc., an Illinois corporation prior to January 2, 1979. That said Louis J. Maiorano, Sr. did sell all of his shares of common stock to Louis J. Maiorano, Jr. who from such date became and to date is the President and sole stockholder of said corporation. Further, Aero Plating Works, Inc., is an Illinois corporation, which for a very short period of time had been dissolved by the Secretary of State of Illinois as the result of the inaction of its counsel but has now been fully reinstated. That Louis J. Maiorano had no interest or management function in said business.

JURISDICTION

The Respondent admits the statement as to jurisdiction in this cause.

DETERMINATIONS

1. For response to paragraph 1, Louis J. Maiorano, Jr. admits the allegations therein contained but only as a sole corporate shareholder; that for further response alleges that Louis J. Maiorano, Sr. is improperly impleaded in this matter.

2-5. For response to paragraphs 2 through 5 inclusive Respondent admits the allegations therein contained.

6. For response to paragraph 6 and subpart (1) Respondent denies that Aero Plating Workings, Inc. was a storage facility for hazardous wastes.

7. For response to paragraph 7 Respondent denies the allegations therein contained.

8. For response to paragraph 8 Respondent denies the allegations therein contained.

9. For response to paragraph 8 and subparts (a) through (t) inclusive Respondent denies the allegations therein contained.

10. For response to paragraph 10 and subparts (a) through (p) inclusive Respondent denies the allegations therein contained.

11. For response to paragraph 11 and subparts (a) and (b) Respondent denies the allegations therein contained.

12. For response to paragraph 12 Respondent denies the allegations therein contained.

ORDER AND CONDITIONS FOR CONTINUED OPERATION OR CLOSURE

1. For response to paragraph 1 and subparts (a) through (e) inclusive Respondent alleges that Aero Plating Works, Inc. at 1860 North Elston Avenue, Chicago, Illinois has totally terminated its business operation and will comply with the requests therein made rather than become engaged in a wasteful contested issue.

ASSESSMENT OF PENALTY

For response to the assessed Penalty Respondent alleges that the penalty is totally unwarranted and if found to be in anyway warranted the amount is

not in accordance with the calculation under the published matrix.

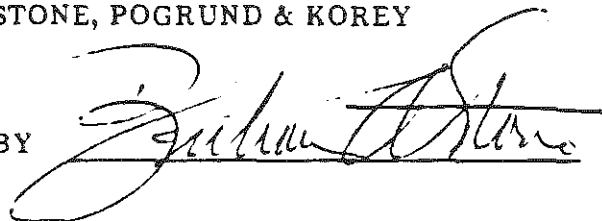
SETTLEMENT CONFERENCE

That parties have met in conference to resolve the issues and will probably finalize some settlement that is fair and reasonable.

Respectfully submitted

STONE, POGRUND & KOREY

BY

A handwritten signature in cursive script, appearing to read "Julian Stone", written over a horizontal line.

Stone, Pogrun & Korey
221 North LaSalle Street
28th Floor
Chicago, Illinois 60601
312/782-3636

PROOF OF SERVICE

I hereby certify that I have caused copies of the foregoing response to the complaint in this cause to be served upon the persons below named this 14/87 day of March 1985 by depositing the same in the U.S. Mail chute at 221 North LaSalle Street, Chicago, Illinois postage prepaid in envelopes addressed as follows:

Valdes V. Adamkus
Regional Administrator
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Bertram A. Stone

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

Mail Code A-110

February 21, 1986

OFFICE OF
THE ADMINISTRATOR

Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. EPA, Region V
230 South Dearborn Street
Chicago, IL 60604

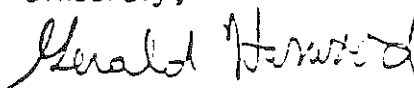
Bertram A. Stone, Esquire
Stone, Pogrud & Korey
221 N. LaSalle Street, 28th Floor
Chicago, IL 60601

Subject: Aero Plating Works
Docket No. V-W-84-R-071-R

To the Parties:

Enclosed please find revised page 24 of my Initial Decision dated February 13, 1986, omitting paragraph 4 on page 25. The provision requiring Respondent to account for their hazardous waste disposed from the facility since November 19, 1980, was improperly included in the order. See my Initial Decision at page 22. Please substitute page 24 for pages 24 and 25 included in my original decision.

Sincerely,



Gerald Harwood
Administrative Law Judge

Enclosure

Certificate of Service

I hereby certify that the original of this letter was hand delivered to the Hearing Clerk, EPA Headquarters, and copies were sent to counsel for Complainant and Respondent in this proceeding, along with a copy to the Regional Hearing Clerk, U.S. EPA, Region V.



Dottie Woodward
Secretary to Judge Harwood

3. Respondents shall comply immediately with the following requirements:

- a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 111. Adm. Code § 722.120(a).
- b. Package hazardous wastes according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 111. Adm. Code §722.130.
- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 111. Adm. Code §722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 111. Adm. Code § 722.132(b):

"HAZARDOUS WASTE---Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

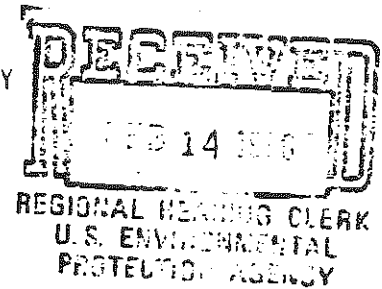
Generator's Name and Address _____
 Manifest Document Number _____

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 111. Adm. Code § 722.133.

 Gerald Harwood
 Administrative Law Judge

DATED: February 13, 1986
 Washington, D.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR



In the Matter of)
Aero Plating Works, Inc.,) Docket No. V-W-84-R-071-P
Respondent)

1. Operator of a hazardous waste facility asserted to have carried on business as a de facto corporation, because although corporation was dissolved for non-payment of taxes and franchise fees it was subsequently reinstated, held individually liable for the violations of RCRA and the regulations thereunder as "operator" of the facility.
2. Owner of the land and building occupied by a hazardous waste facility held jointly and severally liable with the operator of the facility for violations of RCRA and the regulations thereunder.
3. In assessing penalty for violations of RCRA and the regulations thereunder against the owner of the land and building occupied by a hazardous waste facility, penalty assessed for failure to file a Part A permit application and for failing to properly close the facility was not reduced. Penalty for other violations relating to the management of the facility was reduced because it was questionable as to how much control the owner had over the operation.

Appearance for Complainant: Babette J. Neuberger, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, IL 60604

Appearance for Respondent: Bertram A. Stone, Esquire
Stone, Pogrund & Korey
221 N. LaSalle Street, 28th Floor
Chicago, IL 60601

INITIAL DECISION

This is a proceeding under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (hereafter "RCRA"), Section 3008, 42 U.S.C. 6928, on a complaint assessing civil penalties for alleged violations of the Act and containing an order requiring compliance with the Act. 1/

The complaint, issued by the United States Environmental Protection Agency ("EPA"), Region V, charged that Respondents Louis J. Maiorano, Sr., and Louis J. Maiorano, Jr., doing business as Aero Plating Works, have been storing hazardous wastes since November 19, 1980, that they have operated their facility without a permit or achieving interim status to continue operation of the facility pending issuance of a permit, and that they have violated numerous requirements prescribed by the State of Illinois under a hazardous waste program administered by the State pursuant

1/ Pertinent provisions of Section 3008 are:

Section 3008(a)(1): "[W]henever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period or both"

Section 3008(g): "Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation."

to authority granted under RCRA, Section 3006(c), 42 U.S.C. 6926. 2/

Specific violations charged were as follows:

Operating without a permit and without having achieved interim status in violation of RCRA, Section 3005(a).

Failure to submit Part A of the application for a permit, as required by 35 Ill. Adm. Code § 703.153.

Failure to conduct a general waste analysis, in accordance with a waste analysis plan, as required by 35 Ill. Adm. Code § 725.113(a) and (b).

Failure to comply with the general facility inspection requirements of 35 Ill. Adm. Code § 725.115(b) and (d).

Failure to provide personnel training, as required by 35 Ill. Adm. Code § 725.116(a).

Failure to maintain personnel training records, as required by 35 Ill. Adm. Code § 725.116(d).

Failure to equip the facility with spill control and emergency equipment, as required by 35 Ill. Adm. Code § 725.132(c).

Failure to maintain adequate aisle space, as required by 35 Ill. Adm. Code § 725.135.

Failure to make arrangements with local emergency authorities, as required by 35 Ill. Adm. Code § 725.137.

Failure to have a contingency plan, as required by 35 Ill. Adm. Code § 725.151.

Failure to designate an emergency coordinator, as required by 35 Ill. Adm. Code § 725.155.

2/ The EPA granted the State of Illinois interim authorization to operate its hazardous waste program on May 17, 1982. 47 Fed. Reg. 21043. Interim authorization included the authority to administer the regulations which are involved in this proceeding. See 47 Fed. Reg. 21045. RCRA, Section 3008(a)(2), 42 U.S.C. 6928(a)(2), authorizes the EPA to enforce state regulations issued under authorized state programs if prior notice of the enforcement action is given to the state. Such notice to the State was given in this matter. Plaintiff's Exh. 20.

Failure to maintain a written operating record, as required by 35 111. Adm. Code § 725.173.

Failure to prepare an annual report, as required by 35 111. Adm. Code § 725.175.

Failure to have a written closure plan, as required by 35 111. Adm. Code § 725.212.

Failure to complete closure in accordance with an approved closure plan as required by 35 111. Adm. Code § 725.213(b).

Failure to provide certification of facility closure by an independent registered professional engineer as required by 35 111. Adm. Code § 725.215.

Failure to provide a written estimate of the cost of closing the facility, as required by 35 111. Adm. Code § 725.242.

Failure to establish financial assurance for closure of the facility, as required by 35 111. Adm. Code § 725.243; and liability insurance for sudden and accidental occurrences as required by 35 111. Adm. Code § 725.247.

Failure to store hazardous waste in closed containers, as required by 35 111. Adm. Code § 725.273.

Failure to inspect hazardous waste containers weekly, as required by 35 111. Adm. Code § 725.274.

Failure to store hazardous waste in tanks which will not leak, corrode, etc., as required by 35 111. Adm. Code § 725.292(b).

Failure to maintain at least 2 feet of freeboard at uncovered hazardous waste tanks, as required by 35 111. Adm. Code § 725.292(c).

Failure to inspect hazardous waste storage tanks, as required by 35 111. Adm. Code § 725.294.

A penalty of \$80,000 was requested. The compliance order included in the complaint directed Respondents to submit a closure plan for the facility, to close the facility, and to prepare manifests and comply with other requirements for shipping hazardous waste off site.

Respondents answered contending that Louis Maiorano, Sr. was improperly impleaded as a party, that Louis Maiorano, Jr. was the sole corporate shareholder of Aero Plating Works, Inc., denying that Aero Plating Works, Inc. was a storage facility for hazardous waste, and denying the violations charged. Respondents also asserted that Aero Plating Works, Inc. has terminated its business operation and will comply with the compliance order.

Settlement discussions were held but were unfruitful. The matter went to hearing and a hearing was held on July 30 and 31, 1985. Both sides thereafter filed post-hearing briefs. The following decision is entered on consideration of the entire record and the parties' submissions.

Findings of Fact

The following facts are uncontested: 3/

1. Respondent, Louis J. Maiorano, Jr. owned and operated the Aero Plating Works at 1860 N. Elston Avenue, Chicago, Illinois 60622. (Stipulation, Tr. 3). 4/
2. Respondent, Louis J. Maiorano, Sr. owns the parcel of land and the structures thereon, located at 1860 N. Elston Avenue, Chicago, Illinois, 60622. (Stipulation, Tr. 9).
3. Respondent, Louis J. Maiorano, Sr. leased the land to Aero Plating Works from January 2, 1979 to December 31, 1982, and on December 10, 1982 extended the term of the lease to December 31, 1984. (Stipulation, Tr. 9).

3/ See Respondent's answer brief at 1.

4/ "Tr." refers to the transcript of the proceeding.

4. On December 1, 1980 the corporate charter of Aero Plating Works was involuntarily dissolved by the Illinois Secretary of State. (Stipulation, Tr. 3, 4).
5. The Illinois Environmental Protection Agency (IEPA) inspected the facility on September 15, 1983, and January 24, 1984. (Stipulation, Tr. 4).
6. Since November 19, 1980, wastes which have been identified or listed as hazardous wastes under Section 3001 of RCRA, 42 U.S.C. § 6921, and 35 Ill. Adm. Code § 721, have been stored at the Aero Plating Facility for longer than 90 days without a permit and without having achieved interim status. (Stipulations, Tr. 4, 9).
7. Respondent, Louis J. Maiorano, Jr., filed a notification pursuant to Section 3010 of RCRA on August 19, 1981. This notification stated that Aero Plating Works was only a generator of hazardous wastes (D007). (Stipulation, Tr. 4).
8. IEPA inspections in September 15, 1983, and January 24, 1984, revealed that the facility was operating both as a generator and treatment, storage, and disposal facility. (Stipulation, Tr. 4).
9. At the time of each of the above-referenced inspections, hazardous wastes were stored for a period in excess of 90 days, in quantities greater than 1000 kg. (Stipulation, Tr. 4).
10. Among the wastes stored on the premises were cyanide bearing wastes including spent stripping and cleaning bath solutions where cyanides were used in the process (F009). (Stipulation, Tr. 4).
11. On September 28, 1984, forty-nine 55-gallon drums of hazardous wastes containing wastewater treatment sludges from electroplating operations (F006) were hauled from the facility. (Complainant's Exh. 22; Tr. 273-274).

12. Sample results of materials identified as sludge from the basement revealed the following contaminants: cyanide, chromium, nickel. (Complainant's Exh. 6; Tr. 282).

13. Between November 19, 1980, and sometime in 1982, "chromic rain" from the first floor operations dripped into the basement, (Tr. 505); the "chromic rain" had a low pH indicating it was an acid (Tr. 231, 232, 297).

14. Cyanide will react with an acid to form hydrogen cyanide gas which can be lethal to humans upon inhalation. (Tr. 288, 289).

15. As of the September 15, 1983 IEPA inspections, the following violations were committed:

(a) A Part A application for a Hazardous Waste Management permit had not been submitted. (Stipulation, Tr. 4).

(b) A general waste analysis to obtain all the information which must be known to treat, store, or dispose of hazardous waste had not been conducted. (Complainant's Exh. 3, Attachment A; Tr. 508).

(c) The general facility inspection requirements of 35 Ill. Adm. Code § 725.115(b) and (d) had not been complied with. (Stipulation, Tr. 5).

(d) Personnel training to teach employees to perform their duties in a way that ensures the facility's compliance with 35 Ill. Adm. Code § 725 had not been conducted. (Complainant's Exh. 3, Attachment A, Tr. 34, 35).

(e) Records setting forth job titles and job descriptions had not been maintained; nor were records kept describing the type and amount of instruction that would be given a person filling a position listed

under 35 Ill. Adm. Code § 725.116(d)(1). (Complainant's Exh. 3, Attachment A; Tr. 34, 35).

(f) The facility was not equipped with spill control and emergency equipment. (Complainant's Exh. 3, Attachment A).

(g) Annual reports covering facility activities during the previous calendar year, including the information required in 35 Ill. Adm. Code § 725.175 had not been prepared. (Complainant's Exh. 3, Attachment A).

(h) Adequate aisle space as required by 35 Ill. Adm. Code § 725.135 was not maintained. (Complainant's Exh. 3, Attachment A; Tr. 35).

(i) Arrangements with organizations such as police, fire departments, and emergency response teams whose services might be needed in an emergency were not made. (Stipulation, Tr. 5).

(j) A contingency plan that described the actions that facility personnel must take in response to explosions or any unplanned sudden or non-sudden release of hazardous waste to the air, soil, or surface; and which identified an emergency coordinator had not been prepared. (Stipulation, Tr. 5).

(k) A written operating record containing a description of waste stored, quantities of waste stored, location of those wastes, records and results of inspections was not prepared nor maintained. (Stipulation, Tr. 6).

(l) A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not prepared. (Stipulation, Tr. 6).

(m) A written estimate of the cost of closing the facility was not developed. (Stipulation, Tr. 6).

(n) Neither financial assurance for the closure of the facility, nor financial responsibility for sudden and accidental occurrences had been demonstrated. (Stipulation, Tr. 6, 7).

(o) Hazardous waste was stored in open containers. (Complainant's Exh. 3, Attachment A; Tr. 43).

(p) Weekly inspections of the hazardous waste container storage area at the facility were not conducted. (Stipulation, Tr. 5).

(q) Hazardous wastes were stored in tanks that were leaking and/or corroded. (Complainant's Exh. 3, Attachment A; Tr. 43).

(r) At least two feet of freeboard was not maintained at uncovered hazardous waste tanks. (Complainant's Exh. 3, Attachment A; Tr. 40-41).

(s) Hazardous waste storage tanks were not inspected. (Stipulation, Tr. 5).

16. IEPA informed the Respondents of the violations listed in paragraph 18, in a Compliance Inquiry Letter dated September 21, 1983. (Stipulation, Tr. 7).

17. On January 24, 1984, representatives of the IEPA inspected Respondents' facility. As of January 24, 1984 the following violations were committed:

(a) A Part A application for a Hazardous Waste Management permit had not been submitted. (Stipulation, Tr. 7).

(b) A detailed physical and chemical analysis of the waste to obtain all the information all the information which must be known to treat, store, or dispose of hazardous waste had not been conducted. (Stipulation, Tr. 7).

(c) Facility inspections requirements of 35 Ill. Adm. Code § 725.115(b) and (d) were not complied with. (Stipulation, Tr. 7, 8).

(d) Certain aspects of the personnel training requirements had been corrected, however, respondents had not completely corrected all violations of 35 Ill. Adm. Code § 725.116. (Tr. 75).

(e) Spill control and emergency equipment was not listed in the contingency plan. (Complainant's Exh. 10, Attachment A; Tr. 75).

(f) Annual reports covering facility activities during the previous calendar year, including the information required in 35 Ill. Adm. Code § 725.175 were not prepared. (Complainant's Exh. 10, Attachment A; Tr. 75).

(g) Adequate aisle space as required by 35 Ill. Adm. Code § 715.135 was not maintained. (Complainant's Exh. 10, Attachment A; Tr. 77).

(h) Copies of a contingency plan were not submitted to local emergency authorities. (Complainant's Exh. 10, Tr. 74, 75).

(i) An evacuation plan was not included in the contingency plan. (Complainant's Exh. 10, Tr. 74, 75).

(j) A written operating record containing a description of the waste stored, location of those wastes, records and results of inspections, and all closure cost estimates was not kept. (Complainant's Exh. 10, Tr. 78).

(k) A written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life was not developed. (Stipulation, Tr. 8).

Discussion, Conclusions and Penalty

The dispute in this case centers not around the violations charged in the operation of the Aero Plating Works facility, but on the reasonableness of the proposed aggregate penalty of \$80,000, and the personal liability of Mr. Maiorano, Sr., and Mr. Maiorano, Jr. for the penalty. The violations established by the record and the penalties proposed by the EPA for them are as follows:

Failure to submit a preliminary notification of operating as a hazardous waste storage facility as required by RCRA Section 3010. <u>5/</u>	\$ 6,500.00
Failure to file a Part A permit application as required by 35 <u>111</u> . <u>Adm. Code</u> § 703.150 and 703.153.	\$10,500.00
Failure to develop and maintain a written operating record as required by 35 <u>111</u> . <u>Adm. Code</u> § 725.173.	\$ 3,000.00
Failure to obtain a general waste analysis in accordance with a waste analysis plan as required by 35 <u>111</u> . <u>Adm. Code</u> § 725.113 (a) and (b).	\$ 3,000.00
Failure to develop and maintain a written contingency plan as required by 35 <u>111</u> . <u>Adm. Code</u> §§ 725.151, 725.152(e) and (f), 725.153 and 725.155.	\$10,500.00
Failure to maintain emergency equipment as required by 35 <u>111</u> . <u>Adm. Code</u> § 725.132(c).	\$ 2,500.00

5/ State authorization did not dispense with the statutory requirement of filing a preliminary notification of hazardous waste activity under RCRA 3010. It merely meant that after state authorization, the notifications had to be filed with the State. See RCRA, Section 3010(a). The wastes handled by Aero Plating, D007, F006 and F009 first became subject to regulation on November 19, 1980. See 45 Fed. Reg. 33084 (May 19, 1980). Prior to Illinois receiving interim authority to administer its own RCRA program in May 17, 1982, Aero Plating was subject to the Federal program.

Failure to make arrangements with the local authorities as required by 35 <u>111</u> . <u>Adm. Code</u> § 725.137.	\$ 3,000.00
Failure to conduct inspections of storage areas as required by 35 <u>111</u> . <u>Adm. Code</u> § 725.115(b) and (d).	\$ 3,000.00
Failure to manage containers and tanks properly as required by 35 <u>111</u> . <u>Adm. Code</u> §§ 725.135, 725.273(a) and (b), 725.292.	\$ 3,000.00
Failure to conduct personnel training as required by 35 <u>111</u> . <u>Adm. Code</u> § 725.116(a).	\$ 2,500.00
Failure to prepare and submit an annual report are required by 35 <u>111</u> . <u>Adm. Code</u> § 725.175.	\$ 3,000.00
Failure to develop a closure plan and to close the facility in accordance with an approval plan as required by 35 <u>111</u> . <u>Adm. Code</u> §§ 725.212 and 725.213.	\$20,000.00
Failure to establish a cost estimate for closure; financial assurance for closure; and liability insurance as required by 35 <u>111</u> . <u>Adm. Code</u> §§ 725.242, 725.243 and 725.247.	<u>\$ 9,500.00</u>
Total Proposed Penalty	\$80,000.00

The Personal Liability of Louis Maiorano, Jr.

Aero Plating was involuntarily dissolved on December 1, 1980, for failure to file an annual report and pay the annual franchise tax required by state law. 6/ It was not reinstated until August 31, 1984. 7/ Respondents contend that during the period it was dissolved, Aero Plating operated as a de facto corporation so as to shield Mr. Maiorano, Jr., from any individual liability. The argument is without merit. Mr. Maiorano, Jr. is the sole stockholder of the corporation. 8/ It is clear from the

6/ Plaintiff's Exh. 26.

7/ Tr. 510.

8/ Tr. 455.

entire record in this proceeding that he not only made the decisions with respect to the operations of the company but also was very much involved in carrying them out. Mr. Maiorano, Jr. then is plainly an "operator" of the facility as defined in the RCRA regulations, and as such personally liable for the violations. 9/

The EPA also contends that even under Illinois law, reinstatement of the corporate charter would not absolve Mr. Maiorano, Jr. from personal liability, citing Estate of Plepel v. Industrial Metals, Inc., 450 N.E. 2d 1244 (1st App. Dist. 1983). 10/ The test therein enunciated of whether an individual acting for a defective corporation becomes personally liable seems to depend on whether the party asserting liability intended to make the individual personally liable. 11/ Under such a test, if during the period that Aero Plating was not legally incorporated, the State and the EPA still dealt with Aero Plating as a corporate entity, Mr. Maiorano, Jr. presumably would be able to escape individual liability. The EPA appears to ignore that issue and rest its argument solely on the fact that the corporation had been involuntarily dissolved. In any event, Estate of Plepel was

9/ "Operator" is defined to mean "the person responsible for the overall operation of a facility." 40 C.F.R. 260.10. This clearly fits Maiorano, Jr.'s relationship to Aero Plating. Such administrative construction of a statutory term is, of course, entitled to great weight. Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. _____, 81 L.Ed.2d 694, 703-04 (1984), Udall v. Tallman, 380 U.S. 1, 16 (1965). Since the Illinois program was approved as "substantially equivalent" to the Federal program (47 Fed. Reg. 21045 (May 17, 1982)), it is presumed that the Illinois regulations, although not always as specific, are to be construed the same as the Federal. See 35 Ill. Adm. Code 702.109. Certainly, I have found nothing to the contrary in the State regulations nor has any provision in the regulations or any case been cited to me to indicate otherwise.

10/ Estate of Plepel is attached to Complainant's response to motion to strike complaint filed November 15, 1984, in the pleadings file.

11/ Estate of Plepel, 450 N.E. 2d at 1247.

an action for debt and would not necessarily apply here because the liability involved, creating an environmentally hazardous condition, is more like a tort against the public, and the general rule appears to be that corporate officials who participate in a tort are jointly liable with the corporation for the injury caused. Escude Cruz v. Ortho Pharmaceutical Corp., 619 F.2d 902, 907 (1st Cir. 1980), New York v. Shore Realty Corp., 759 F.2d at 1032, 1051 (2d Cir. 1985). ^{12/} Liability here, however, is predicated upon the provisions of RCRA and the regulations issued thereunder, and not upon general State law regarding the personal liability of officers of de facto corporations.

It is found, accordingly, that Mr. Maiorano, Jr. is personally liable for the violations, and for the penalty exacted for them.

The Personal Liability of Louis Maiorano, Sr.

Louis Maiorano, Sr. is the owner of the land on which Aero Plating was located and the building in which it was housed. As such he is an owner or at least part owner of the facility. ^{13/} The performance standards authorized by RCRA, Section 3004 (which includes the interim status requirements) apply to both owners and operators of facilities, as do also the

^{12/} Respondents says Estate of Plepel is not applicable since the case imposes personal liability only where reinstatement would substitute worthless corporate liability for valuable personal liability, and that would not be true here since assertedly Maiorano, Jr. has no more assets than the corporation. Answer brief at 9. The evidence of Mr. Maiorano, Jr.'s financial condition does not support a finding that his financial resources are as limited as Respondents claim.

^{13/} See definition of "facility" in 40 C.F.R. 260.10, and definition of "Hazardous Waste Management Facility," 35 Ill. Adm. Code 702.110.

permitting requirements of RCRA, Section 3005. The EPA has construed these provisions as making the owner and operator of a facility jointly and severally responsible for carrying out the requirements of the hazardous waste regulations and for obtaining a permit. 14/ As an administrative construction it is again entitled to great weight. 15/ In short, Mr. Maiorano, Sr.'s personal liability does not rest upon the extent to which he actively participated in the operation of the facility or even knew of the violations, but on his ownership of the facility. 16/ The extent to which he actively participated in the facility's operation, however, is relevant in determining the appropriate penalty to be assessed against him. 17/

The Reasonableness of the Penalty

The EPA has provided a detailed justification of how the penalty conforms with the EPA's RCRA Civil Penalty Policy, taking into account the seriousness of the violations, as determined by their potential harm and the extent they deviate from regulatory requirements. 18/

14/ See 47 Fed. Reg. 32039 (July 23, 1982), where the EPA explained why it requires the signature of both the owner and operator on a permit application. The only instance where the EPA would not hold the owner jointly and severally liable is where the owner holds only bare legal title for the purpose of providing security for a financing agreement. See 45 Fed. Reg. 74490 (November 10, 1980). There is no evidence here that Mr. Maiorano, Sr.'s ownership was of this nature.

15/ See supra at 14, n. 9.

16/ The case of Alton & Southern NY Co. v. Illinois Pollution Control Board, 12 Ill. App. 3d 319, 297 N.E. 2d 762 (5th App. Dist. 1973), relied on by Respondents is not in point because it does not deal with liability under RCRA.

17/ See infra at 20.

18/ Complainant's brief in support of proposed order at 16-40.

The potential harm created by the violations, surely a reasonable factor in determining the seriousness of the violation, is explained by Dr. Homer, an expert in the assessment of the risks associated with hazardous waste sites. 19/ What is missing, however, is some firm evidence showing precisely what quantities of hazardous waste were involved and for what periods of time. This is a factor which is also to be considered in the potential for harm. 20/ The notification of hazardous waste activity and Part A permit application are of primary importance to the regulatory purposes of RCRA, and the proposed penalty of \$17,000 for failure to comply with these requirements should stand. I find, however, that the penalty for the remaining violations should be reduced to \$19,500, making a total assessed penalty of \$36,500. 21/

Respondents argue that there is no evidence establishing the duration of the violations charged. Drums of mud from the basement observed during the January 1984 inspection were found to contain cyanide, a hazardous constituent of F006 waste (waste water treatment sludges from electroplating operations) and F009 waste (spent stripping and cleaning bath solutions from electroplating operations). 22/ The evidence indicates

19/ Tr. 283-303.

20/ RCRA Civil Penalty Policy, Plaintiff's Exh. 69, at 6.

21/ In effect this has meant placing all violations in the minor "potential for harm" category because of the failure of the record to show what actual quantities of hazardous waste have been involved. A penalty of \$3,000 each is assessed for the two violations dealing with closing the facility and \$1500 for each of the remaining violations.

22/ Tr. 274, 277; Plaintiff's Exh. 6 (Sample Nos. X107, X108, X109).

that this waste could have dated back to sludge from electroplating operations found on Aero Plating's basement floor in 1981. 23/ There is no credible evidence indicating it was all of recent origin. 24/ It is found, accordingly, that there have been continuing violations since 1981. 25/

Respondents presumably to show their good faith point out that the four discontinued plating tanks were triple rinsed in order to remove all plating waste before being disposed of, that Aero Plating had a contingency plan after the first inspection and that it also had a personnel training program. 26/ Respondents, however, produced no evidence, such as tests

23/ See Plaintiff's Exhs. 49, 56.

24/ Respondents have been storing hazardous wastes since November 19, 1980, and proffered no evidence showing shipments of listed wastes prior to September 28, 1984. Respondents concede that not all of the shipment on September 28, 1984, was of current (less than 90 days) origin. See Finding of Fact No. 6; Plaintiff's Exhs. 22, 23. If the mud in the drums sampled by the State investigators was a mixture of a listed waste and other waste resulting from a spill instead of being solely a listed waste, it would still be hazardous waste the storage of which was subject to RCRA's requirements. See 40 C.F.R. 261.3(a)(2)(iv), 207.2(c)(3); 35 111. Adm. Code 721.103(b), 725.101(c)(11).

25/ A sample from the debris and sludge pile located in the basement was also found to contain cyanide. Plaintiff's Exh. 6 (Sample No. X118); Plaintiff's Exh. 11 (p. 2 and Photograph No. 12). The most logical explanation for the presence of the cyanide is that the debris and sludge became contaminated with spills and drippings of cyanide bearing materials from the first floor which were occurring as early as 1981. Tr. 225, 478. Maiorano, Jr.'s testimony to the contrary (Tr. 480, 505) is unpersuasive because he never did really explain how the waste pile and mud could have been contaminated with cyanide (see Tr. 484-85). Respondents' proposed finding that the pile of debris and sludge on the basement floor was not contaminated from discharges from the floor above (Answering brief at 1) is rejected for the same reason.

26/ Respondents' answer brief at 1-2. The tanks referred to by Respondents would appear to be those found during the inspection on August 28, 1984, which were discolored by various materials on the outside and which were observed to have sludge and fluid on the inside. See Plaintiff's Exh. 13 (Photograph No. 29); Plaintiff's Exh. 19A; Tr. 117-18.

of samples taken from the tanks and their surfaces, showing that the rinsing of the tanks was sufficient to decontaminate them. The contingency plan was also deficient in several respects. 27/ Thus, these instances do not add up to a persuasive showing of a conscientious effort to achieve full compliance with the requirements.

The remaining questions to be considered are whether any penalty is merited against Mr. Maiorano, Sr. since he assertedly did not know about the violations and had no control over the business of Aero Plating, and whether an adjustment should be made in the case of either Respondent because of his asserted inability to pay the penalty.

With respect to Mr. Maiorano, Sr., the records shows that aside from his ownership of the facility, he also worked as a "consultant" for Aero Plating, that he was present during the inspections of the facility and also at an enforcement meeting with the Illinois Environmental Protection Agency in May 1984. 28/ In addition, he called the State about the disposal of the drums of chromic acid which had been found on a trailer near the facility. 29/ The evidence shows, however, that Mr. Maiorano, Sr. did in good faith transfer the business to his son Louis Maiorano, Jr. in 1979, prior to the time the violations occurred. 30/ It is questionable, then, how much control Mr. Maiorano, Sr. really could exercise over the

27/ Tr. 73-74.

28/ Tr. 63, 66, 111; Complainant's Exh. 13.

29/ Tr. 50-51. The drums of chromic acid, however, are not being questioned as constituting hazardous waste. Tr. 463.

30/ Tr. 413-20.

operations of the business during the time the violations arose, and to what extent he should really be held responsible for such violations. The penalty policy recognizes that lack of willfulness or negligence may justify a reduction in the gravity based penalty. 31/ It could be argued that such a defense is available only to the operator of the facility, and the owner is strictly liable for whatever penalty is assessed against the operator. This seems an unnecessarily harsh construction, however, and since it is not clear that this is what was intended by the penalty policy, it will not be followed here.

As to the failure to file a permit, the owner of the facility is equally responsible with the operator for complying with this requirement. Accordingly, a penalty of \$10,500 is assessed against both. Mr. Maiorano, Sr. must also bear equal responsibility with Mr. Maiorano, Jr. for not properly closing the facility. Accordingly, a penalty of \$6,000 is also assessed against both for these violations. 32/ As to the remaining violations, Mr. Maiorano, Jr. must really bear the primary responsibility for them. Accordingly, the penalty against Mr. Maiorano, Sr. for these violations is reduced to \$2,000. A further reduction is not warranted because Mr. Maiorano, Sr. undoubtedly knew generally how the business was being operated and his relationship as owner of the property and creditor precludes assuming that he had no say whatever on how the business was being operated. Thus, the penalty to be assessed against Mr. Maiorano, Sr.

31/ Plaintiff's Exh. 69 at 17-18.

32/ See supra at 17, n. 21.

for which he will be jointly and severably liable with Mr. Maiorano, Jr. is \$18,500.

Also to be considered is the ability of Mr. Maiorano, Sr. to pay the penalty assessed herein. Contrary to what Respondents argue (answering brief at 8), the burden rests upon Respondent to establish his inability to pay. 33/ Since the Aero Plating operation has been closed, there is no concern here about whether the penalty assessed would put the company out of business. The evidence submitted by Mr. Maiorano, Sr. does not demonstrate that he would have insufficient assets and income to pay the \$18,500 penalty, if not in one sum, than at least by installments or deferred payments, even assuming he will still have to pay closing costs in some unspecified amount. 34/

In the case of Mr. Maiorano, Jr., the only adjustment that would be warranted would be his asserted inability to pay the penalty. Mr. Maiorano, Jr., has furnished some financial data which is sufficient to merit a reduction of the penalty to \$22,000 (a reduction of approximately 40%), having in mind that Mr. Maiorano, Jr. would also be jointly responsible for closing the facility. 35/

33/ See RCRA Penalty Policy, Plaintiff's Exh. 69 at 20. Placing the burden on Respondent is in accordance with the general rule that the burden should be borne by the one naturally possessed of the relevant evidence. Commonwealth of Puerto Rico v. Federal Maritime Commission, 468 F.2d 872, 881 (D.C. Cir. 1972), United States v. Continental Insurance Co., 776 F.2d. 962, 964 (11th Cir. 1985).

34/ Tr. 447-51, 452.

35/ Respondents Exh. 7. The information furnished in Respondents' prehearing exchange was also considered.

Finally, the EPA in its compliance order would require Respondents to account for their disposal of hazardous waste since November 19, 1980. It is doubtful whether Respondents really have the records that would enable them to do so, and, accordingly, the provision is stricken from the order.

ORDER 36/

Pursuant to the Solid Waste Disposal Act, as amended, Section 3008, 42 U.S.C. 6928, the following order is entered against Respondents, Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

1.(a) A civil penalty of \$18,500 is assessed Mr. Maiorano, Sr. and Mr. Maiorano, Jr., for violations of the solid Waste Disposal Act found herein. Mr. Maiorano, Sr. and Mr. Maiorano, Jr. shall be jointly and severally liable for the payment of said penalty. An additional civil penalty of \$3,500 is assessed against Mr. Maiorano, Jr. for said violations.

1.(b) Payment of the full amount of the civil penalty assessed shall be made within sixty (60) days of the service of the final order by submitting a certified or cashier's check payable to the United States of America and mailed to:

EPA - Region V
(Regional Hearing Clerk)
P.O. Box 70753
Chicago, IL 60673

36/ Unless an appeal is taken pursuant to the Rules of Practice, 40 C.F.R. 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 C.F.R. 22.27(c).

If prior to the due date of the payment of the penalty, the Regional Administrator has approved a delayed payment schedule or payment under an installment plan with interest for either Respondent, then payment by such Respondent shall be made according to the schedule or installment plan approved by the Regional Administrator.

II. The following compliance order is also entered against Respondents Louis J. Maiorano, Sr. and Louis J. Maiorano, Jr.:

1. Respondents shall within thirty (30) days of issuance of this Order cease all treatment, storage, or disposal of hazardous waste at the facility except in complete compliance with the Standards Applicable to Generators of Hazardous Waste and Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 35 Ill. Adm. Code Part 725;

2a. Respondents shall submit to the EPA a closure plan for the facility which is approved by the EPA as meeting the standards for such plans contained in 35 Ill. Adm. Code § 725.210, and shall detail the activities to be accomplished and that have already been accomplished by the Respondents to remove and properly dispose of or otherwise handle the hazardous waste at the facility. Said plan must be submitted within thirty (30) days from service of this Order, unless additional time is allowed by the EPA.

b. Within 30 days of EPA approval of the closure plan, Respondents shall complete closure of the facility, in accordance with the approved closure plan and shall submit a certification of closure, as required by 35 Ill. Adm. Code § 725.215.

3. Respondents shall comply immediately with the following requirements:


- a. Prepare manifests prior to the off-site transportation of hazardous waste as required by 35 111. Adm. Code § 722.120(a).
- b. Package hazardous wastes according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 111. Adm. Code §722.130.
- c. Label each drum of hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 111. Adm. Code §722.131.
- d. Prior to shipping hazardous waste off-site mark each container of 110-gallon capacity or less with the following words as required by 35 111. Adm. Code § 722.132(b):

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.
 Manifest Document Number _____.

- e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 111. Adm. Code § 722.133.

4. Respondents shall, within forty-five (45) days of entry of this Order, provide EPA with a full accounting of all hazardous waste disposed from the facility since November 19, 1980, including quantity and chemical composition of the waste, and identity of the hauler and disposal facility, if any.



Gerald Harwood
Administrative Law Judge

DATED: February 13, 1986
Washington, D.C.

ATTACHMENT E

JUL 2 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pertrar A. Stone, Esq.
Pogruno, Stone & Korey
221 North LaSalle Street, 28th Floor
Chicago, Illinois 60601

Re: Aero Plating Works
Docket No. V-W-84-P-071

Dear Mr. Stone:

The United States Environmental Protection Agency has not received payment of the penalty due in the above-captioned case. On February 13, 1986, an Initial Agency Decision was entered against your clients, Louis J. Maiorano, Jr. and Louis J. Maiorano, Sr., assessing a total of \$22,000.00 in penalties. On April 13, 1986, the Initial Decision became a final Agency action.

Failure to pay the above-amount may result in the initiation of a judicial action for collection of the penalties; including costs and interest on the judgment pursuant to 31 U.S.C. §3717.

Very truly yours,

Barbette J. Neuberger
Assistant Regional Counsel

cc: Field/Flam/Ullrich/Schaefer

ATTACHMENT F

PS Form 3811, July 1983 447-945

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.	
1. <input type="checkbox"/> Show to whom, date and address of delivery.	
2. <input type="checkbox"/> Restricted Delivery.	
3. Article Addressed to: Bertram A. Stone, Esq. Pogrud, Stone & Korey 221 North LaSalle Street, 28th Fl. Chicago, Illinois 60601	
4. Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail	Article Number P 243 558 257
Always obtain signature of addressee or agent and DATE DELIVERED	
5. Signature - Addressee X [Signature]	
6. Signature - Agent X [Signature]	
7. Date of Delivery 7/17/86	
8. Addressee's Address (ONLY if requested and for paid) [Signature]	

BERENBERGER: 7/2/86: AERO PLATING WORKS

ATTACHMENT G

IN RE :

Respondent.

Docket No. V-W-84-R-071-P

AFFIDAVIT

I, Beverly Shorty, Regional Hearing Clerk, U.S. EPA Region V, am custodian of all materials filed in administrative actions brought under the Consolidated Rules of Practice in Region V, including actions brought pursuant to Section. At the request of Ellen Carpenter, counsel for Complainant, in this action, I have made a search of my files and do not show any records or receipt of a payment or any correspondence about a payment from Respondents, in the above captioned matter.

Further affiant sayeth not.

Beverly Shorty
Beverly Shorty
Regional Hearing Clerk

Subscribed and Sworn to me

this 24th day of September, 1986.

Notary Public

My Commission expires on September 18, 1987

ATTACHMENT H

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
)	
Louis J. Maiorano, Sr. and)	
Louis J. Maiorano, Jr. d/b/a)	
Aero Plating Works,)	
)	
Defendants,)	
_____)	

COMPLAINT

Plaintiff, United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency (hereinafter "U.S. EPA"), alleges the following:

NATURE OF ACTION

1. This is a civil action for injunctive relief and for the imposition of civil penalties pursuant to Sections 3008(a), (c), and (g) of the Resource Conservation and Recovery Act, as amended (hereinafter "RCRA"), 42 U.S.C. §§6928(a), (c), and (g), arising from defendants' failure to comply with the requirements of RCRA for hazardous waste management facilities and an administrative order issued by U.S. EPA to defendants. Specifically, the United States seeks an order requiring defendants Louis J. Maiorano, Jr. and Louis J. Maiorano, Sr. ("defendants") to

comply with each and every term of the U.S. EPA Agency Order, and imposing civil penalties upon defendants for their violation of the Agency Order.

JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 28 U.S.C. § § 1331, 1345 and 1355. Pursuant to 42 U.S.C. § § 6928(a) and 28 U.S.C. § 1391(b), venue is proper in this district because the defendants' hazardous waste facility is located in this district and because the violations occurred in this district.

3. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the State of Illinois has been notified of the commencement of this action.

DEFENDANTS

4. Louis J. Maiorano, Sr. is an individual who owns the premises on which the electroplating operations were conducted. Maiorano, Sr. leased the property to Louis J. Maiorano, Jr.. Louis J. Maiorano, Jr. is an individual doing business under the name Aero Plating Works, Inc. Aero Plating Works was an Illinois Corporation involuntarily dissolved by the State of Illinois in 1980. Louis J. Maiorano, Jr. owns and operated the facility located at 1860 North Elston Avenue, Chicago, Illinois, at which hazardous wastes have been generated, stored and disposed.

The business conducted at the site was primarily an electroplating operation which generated hazardous wastes including cyanides and spent cyanide plating bath solutions, which are regulated under Subtitle C of RCRA.

STATUTORY AND REGULATORY BACKGROUND

5. RCRA was enacted on October 21, 1976, and amended by the Hazardous and Solid Waste Amendments of 1984. The statute establishes a regulatory program for the management of hazardous wastes. 42 U.S.C. § 6902 and §6921 et seq. The statute provides for administration and enforcement of the program by the federal government and states, where authority has been delegated. U.S. EPA has promulgated regulations under RCRA governing facilities that manage hazardous waste. These regulations are codified at 40 C.F.R. Parts 260-271.

6. Pursuant to Section 3006(c) of RCRA, 42 U.S.C. § 6926(c), the State of Illinois was granted interim authorization on May 17, 1982, to administer and enforce a hazardous waste program in lieu of the federal program. The State of Illinois program is codified at 35 Ill. Adm. Code § 703, et seq. and 35 Ill. Adm. Code § 725, et seq.

7. Pursuant to Section 3008(a)(2), 42 U.S.C. § 6928(a)(2), the United States is authorized to enforce state regulations issued under authorized state programs, upon notification to the state.

8. Section 3005 of RCRA, 42 U.S.C. § 6925, and the state program, generally prohibit the operation of any hazardous waste facility except in accordance with a permit. Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), further provides that a hazardous waste facility which was in existence on November 19, 1980 may obtain "interim status" to continue operating until final action is taken by U.S. EPA or an authorized State with respect to its permit application, so long as the facility satisfies certain conditions specified in that section. Those conditions include filing a timely notice with U.S. EPA that the facility is treating, storing, or disposing of hazardous waste, and filing a timely application for a hazardous waste permit. The owner or operator of an Illinois hazardous waste management facility which has not obtained a RCRA permit must comply with 40 C.F.R. Part 265, and as of May 17, 1982, must comply with 35 Ill. Adm. Code Parts 703 and 725, et seq.

ENFORCEMENT HISTORY

9. On September 7, 1984, Basil G. Constantelos, Director, Waste Management Division, U.S. EPA-Region V, pursuant to his duly delegated authority, issued defendants an administrative RCRA Complaint, Findings of Violation and Order, Docket No. V-W-84-R-071. The Complaint, Findings of Violation and Order required defendants to bring their hazardous waste management facility into compliance with regulations duly promulgated by the Agency and state law pursuant to 42 U.S.C. § 6928. Director Constantelos

also assessed defendants an \$80,000 penalty for their past violations.

10. On July 30 and 31, 1985 an administrative hearing was held on the matter. On February 13, 1986, an initial U.S. EPA Agency decision was rendered by Administrative Law Judge Gerald Harwood, holding defendant Maiorano, Jr. liable for a civil penalty in the amount of \$3,500 and Louis Maiorano, Jr. and Louis Maiorano, Sr. jointly and severally liable for an additional civil penalty of \$18,500. Defendants were ordered, inter alia, to cease all treatment, storage or disposal of hazardous waste at the facility except in compliance with 35 Ill. Adm. Code §725, and to submit to EPA a closure plan which meets the standards contained in 35 Ill. Adm. Code § 725.210.

11. The initial U.S. EPA Agency decision rendered by Administrative Law Judge Gerald Harwood included the following findings of fact:

a. After November 19, 1980, Maiorano, Jr. generated and stored at the site hazardous wastes within the meaning of Section 1003(5) of RCRA, 42 U.S.C. § 6903(5), including but not limited to the following: hazardous wastes containing chromium, spent stripping and cleaning bath solutions where cyanides are used in the process and wastewater treatment sludges from electroplating operations.

b. In violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925 (a), defendants, and each of them,

failed to submit the first part ("Part A") of an application for a permit to treat, store or dispose of hazardous waste at the site.

c. Inspections of the facility conducted on September 15, 1983 and January 24, 1984, revealed numerous violations of state hazardous waste management laws and regulations, including inter alia:

Failure to develop and maintain a written closure plan identifying the steps necessary to completely or partially close the facility at any point during its intended operating life and to completely close the facility at the end of its intended operating life, in violation of 35 Ill. Adm. Code 725.212.

d. As of August 6, 1984, at least a portion of defendants' facility had been leased to new tenants, even though hazardous waste from defendants' operations remained at the site in drums and open vats. The new tenants were located in the same areas of the building as these contaminants.

e. On March 13, 1985, defendants submitted a closure plan to U.S. EPA and the Illinois Environmental Protection Agency (IEPA) which was subsequently disapproved.

12. On February 21, 1986, one provision of the initial Agency Order, not at issue here, was modified. On April 13, 1986, the initial Agency action became a final decision of the

Administrator of U.S. EPA. Defendants were notified that they had thirty days from receipt of the Order to comply with the provisions of the Administrative decision, and sixty days to pay the assessed penalty. That Final Agency Order as modified is attached to and incorporated into this complaint.

13. Defendants have failed to submit an approvable closure plan and complete closure activities as required by the final Agency Order and have failed to pay the ordered penalties.

CLAIM FOR RELIEF

14. Paragraphs 1-17 above are incorporated by reference.

15. Defendants' actions constitute violations of the terms and conditions of a final U.S. EPA Agency Order, in violation of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

16. Pursuant to Sections 3008(a), (c), and (g) of RCRA, 42 U.S.C. § § 6928(a), (c), and (g), defendants, as owners or owners and operators of the facility, are liable for injunctive relief to prevent further violations of the Agency Order and for civil penalties of up to \$25,000 per day of violation.

17. Injunctive relief is necessary to assure that the defendants will comply with the final U.S. EPA Agency Order, including requirements applicable throughout the period of closure activity and to pay the administrative penalty.

WHEREFORE, the United States requests that the Court grant it the following relief:

- a. An order requiring defendants to comply immediately with each and every term and condition of the final U.S. EPA Agency Order;
- b. An order requiring defendants to pay a civil money penalty of \$25,000 per day for each day of violation of the final U.S. EPA Agency Order;
- c. An order requiring defendants to pay Plaintiff's costs in this action, as authorized by 31 U.S.C. §3717; and
- d. For such other and further relief as the Court may deem necessary.

Respectfully submitted,

Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

By: _____

Attorney, Environmental Enforcement
Section
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 633-2779

United States Attorney
Northern District of Illinois

By: _____

Assistant United States Attorney
219 South Dearborn Street
Chicago, Illinois 60604

OF COUNSEL:

Ellen Carpenter
Office of Regional Counsel
U.S. Environmental Protection
Agency - Region V
230 South Dearborn Street
Chicago, Illinois 60604

Office of Enforcement and
Compliance Monitoring
U.S. Environmental Protection
Agency
401 M. Street, S.W.
Washington, D.C. 20460

ATTACHMENT I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

5CS-16

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Louis J. Maiorano, Jr.
422 Melvina
Palatine, Illinois 60067

Dear Mr. Maiorano:

This letter is to inform you that the U.S. Department of Justice, on behalf of the U.S. Environmental Protection Agency, intends to file suit against you pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6928.

The U.S. Department of Justice intends to take such action because you have failed to comply with interim status regulations promulgated under RCRA, and have failed to pay the penalty assessed by a federal administrative law judge, in violation of an Agency Order entered February 13, 1986 and revised February 21, 1986, captioned V-W-84-R-071-P.

A civil action will be commenced against you unless you notify the signatory below that you are in full compliance with the laws and regulations promulgated under RCRA and have fully satisfied the penalty judgement entered against you. Such notice must be received within three (3) working days of receipt of this letter.

Very truly yours,

U.S. Department of Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO AGENCY

5CS-16

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Louis J. Maiorano, Sr.
1215 Saunders Road
Deerfield, Illinois 60015

Dear Mr. Maiorano:

This letter is to inform you that the U.S. Department of Justice, on behalf of the U.S. Environmental Protection Agency, intends to file suit against you pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6928.

The U.S. Department of Justice intends to take such action because you have failed to comply with interim status regulations promulgated under RCRA, and have failed to pay the penalty assessed by a federal administrative law judge, in violation of an Agency Order entered, February 13, 1986 and revised February 21, 1986, captioned V-W-84-R-071-P.

A civil action will be commenced against you unless you notify the signatory below that you are in full compliance with the laws and regulations promulgated under RCRA and have fully satisfied the penalty judgement entered against you. Such notice must be received within three (3) working days of receipt of this letter.

Very truly yours,

U.S. Department of Justice

ATTACHMENT J



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

SCS-16

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard Carlson, Director
IEPA
2200 Churchill Road
Springfield, Illinois 62706

Re: Louis J. Maiorano, Sr.
Louis J. Maiorano, Jr.
d/b/a Aero Plating Works, Inc.
Chicago, Illinois

Dear Mr. Carlson:

This letter is to advise you that the U.S. Department of Justice, on behalf of the U.S. Environmental Protection Agency, (U.S. EPA) intends to file suit against the above-captioned individuals pursuant to Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928.

USEPA has requested this action because the Maiorano failed to comply with an Administrative Order in which they were found to be in violation of interim status regulations and subject to a penalty for its noncompliance.

If you have questions regarding the status of this action, you may contact Ellen Carpenter, Assistant Regional Counsel. She may be reached at (312) 886-7037.

Sincerely yours,

Basil G. Constantelos, Director
Waste Management Division

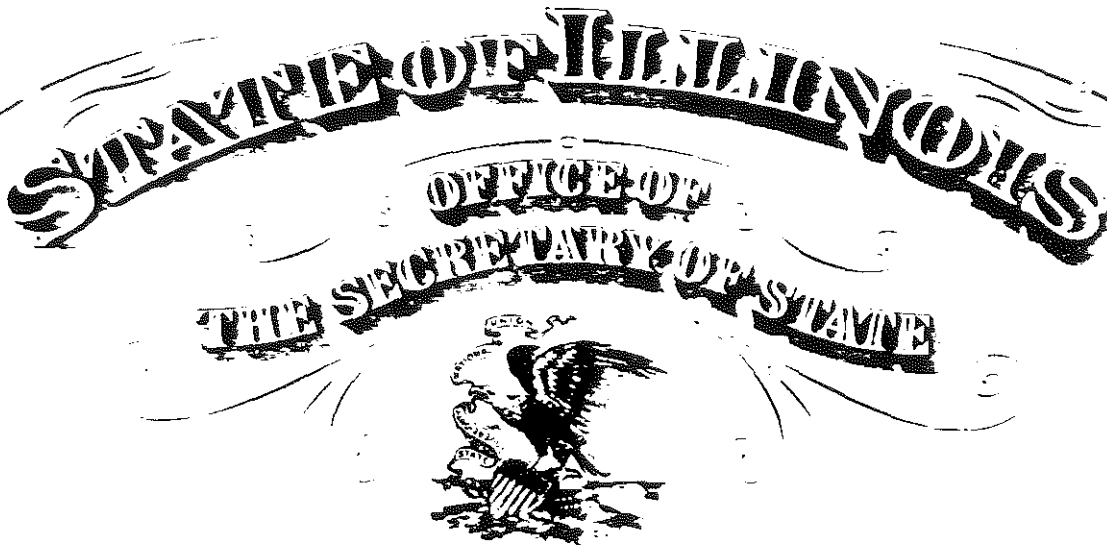
ATTACHMENT K

CASE PLAN

Case Referred to Headquarters	September, 1986
Case Referred to Justice Department	October, 1986
Complaint filed by Justice	November, 1986
Motion for Summary Judgement Prepared	November, 1986
Summary Judgement Motion Filed	December, 1986

ATTACHMENT L

File Number 3233-247-4



To all to whom these Presents Shall Come, Greeting:

I, Jim Edgar, Secretary of State of the State of Illinois,
do hereby certify that THE FOLLOWING AND HERETO ATTACHED IS A TRUE
COPY OF THE ARTICLES OF INCORPORATION INCLUDING THE LATEST CHANGE
OF REGISTERED AGENT AND REGISTERED OFFICE OF AERO PLATING WORKS,
INC.*****

In Testimony Whereof, I have set
my hand and cause to be affixed the Great Seal of
the State of Illinois this 25TH
day of JULY A.D., 1935



Jim Edgar
SECRETARY OF STATE

FORM B

BEFORE ATTEMPTING TO EXECUTE THESE BLANKS BE SUPE TO READ CAREFULLY
THE INSTRUCTIONS ON THE BACK THEREOF.

(THESE ARTICLES MUST BE FILED IN DUPLICATE.)

STATE OF ILLINOIS,

COOK COUNTY } ss.

To EDWARD J. BARRETT, Secretary of State:

(Do not write in this space)
Date Paid 12-24-51
Initial License Fee \$ 8.25
Franchise Tax \$ 5.84
Filing Fee \$ 2.00
Clerk M

We, the undersigned,

Name	Number	Street	Address City	State
Louis J. Maiorano	946	Lilac Lane	Highland Park	Illinois
Paul Rizzo	1944	North Maude	Chicago	Illinois
George Catalano	536	North Springfield Ave.	Chicago	Illinois

being natural persons of the age of twenty-one years or more and subscribers to the shares of the corporation to be organized pursuant hereto, for the purpose of forming a corporation under "The Business Corporation Act" of the State of Illinois, do hereby adopt the following Articles of Incorporation:

ARTICLE ONE

The name of the corporation is: Aero-Plating Works, Inc.

ARTICLE TWO

The address of its initial registered office in the State of Illinois is: 1860 North Elston Avenue

Street, in the City of Chicago (22) County of Cook and
(Zone)

the name of its initial Registered Agent at said address is: Louis J. Maiorano

ARTICLE THREE

The duration of the corporation is: Perpetual

1788 11

PAID
DEC 24 1951

Edward J. Barrett
Secretary of State

ARTICLE FOUR

The purpose or purposes for which the corporation is organized are:

1. To engage in the business of chromium plating, metal plating, and the manufacture of chromium plated and metal plated articles.
2. To manufacture, buy, sell, deal in and with, as principal agent, broker, factor or otherwise, goods, wares, merchandise, materials, products, and personal property of every kind and description.
3. To manufacture, originate, acquire, hold, own, develop, use, maintain, sell, lease or in any manner dispose of systems, plans, processes, forms or methods in any way relating to the development and promotion of industrial or business pursuits of any and all kinds.
4. To acquire, hold, use, develop, license and dispose of and otherwise deal in inventions, improvements, patents, processes and copyrights.
5. To manufacture, buy, sell and deal in machinery, equipment, merchandise and supplies pertaining to the aforesaid business and to other industries and businesses.
6. To engage in the manufacture and sale, the buying and selling of chemical products and other materials and compounds used in the fabrication of metals.

ARTICLE FIVE

PARAGRAPH 1: The aggregate number of shares which the corporation is authorized to issue is 1000, divided into no classes. The designation of each class, the number of shares of each class, and the par value, if any, of the shares of each class, or a statement that the shares of any class are without par value, are as follows:

Class	Series (If any)	Number of Shares	Par value per share or statement that shares are without par value
Common		1000	Without Par Value

PARAGRAPH 2: The preferences, qualifications, limitations, restrictions and the special or relative rights in respect of the shares of each class are:

None

ARTICLE SIX

The class and number of shares which the corporation proposes to issue without further report to the Secretary of State, and the consideration (expressed in dollars) to be received by the corporation therefor, are:

Class of shares	Number of shares	Total consideration to be received therefor:
Common	500 1,000	\$ 16,500.00 \$ \$

ARTICLE SEVEN

The corporation will not commence business until at least one thousand dollars has been received as consideration for the issuance of shares.

ARTICLE EIGHT

The number of directors to be elected at the first meeting of the shareholders is: Three (3)

ARTICLE NINE

PARAGRAPH 1: It is estimated that the value of all property to be owned by the corporation for the following year wherever located will be \$ 21,000.00

PARAGRAPH 2: It is estimated that the value of the property to be located within the State of Illinois during the following year will be \$ 21,000.00

PARAGRAPH 3: It is estimated that the gross amount of business which will be transacted by the corporation during the following year will be \$ 70,000.00

PARAGRAPH 4: It is estimated that the gross amount of business which will be transacted at or from places of business in the State of Illinois during the following year will be \$ 70,000.00

Louis J. Maiorano	}	Incorporators
<i>Louis J. Maiorano</i>		
Paul Rizzo		
<i>Paul Rizzo</i>		
George Catalano		
<i>George Catalano</i>		

OATH AND ACKNOWLEDGMENT

STATE OF ILLINOIS,

COOK } ss.
County }

I, Wesley J. Paulsen, a Notary Public do hereby certify that on the
21 day of Dec., 1951, Louis J. Maiorano,
(Names of Incorporators)

Paul Rizzo and George Catalano

personally appeared before me and being first duly sworn by me severally acknowledged that they signed the foregoing document in the respective capacities therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

Place
NOTARIAL SEAL
Here

Wesley J. Paulsen
Notary Public

JRM B

ARTICLES OF INCORPORATION

AERO-PLATING WORKS, INC.

The following fees are required to be paid at the time of issuing certificate of incorporation: Filing fee, \$20.00; Initial license fee of 50c per \$1000.00 or 1/20 of 1% of the amount of stated capital and paid-in surplus the corporation proposes to issue without further report (Article Six); Franchise tax of 1/20 of 1% of the issued, as above noted. However, the minimum annual franchise tax is \$10.00 and varies monthly on \$20,000 or less, as follows: January, \$15; February, \$14.17; March, \$13.34; April, \$12.50; May, \$11.67; June, \$10.84; July, \$10.00; Aug. \$9.17; Sept. \$8.34; Oct., \$7.50; Nov., \$6.67; Dec., \$5.84; (See Sec. 133, BCA).

In excess of \$20,000.00 the franchise tax per \$1000.00 is as follows: Jan., \$0.75; Feb., .7084; March, .6667; April, .625; May, .5834; June, .5417; July, .50; Aug., .4584; Sept., .4167; Oct., .375; Nov., .3334; Dec., .2917.

All shares issued in excess of the amount mentioned in Article Six of this application must be reported within 60 days from date of issuance thereof, and franchise tax and license fee paid thereon; otherwise, the corporation is subject to a penalty of 1% for each month on the amount until reported and subject to a fine not to exceed \$500.00.

The same fees are required for a subsequent issue of shares except the filing fee of \$4.00 instead of \$20.00.

DEC 24 1951

Edward J. Paulsen
Sec'y of State

Form BCA (12 or 110)

Date 11-12-77

Filing Fee \$ 15

Clerk 111

6921 38

CERTIFICATE OF CHANGE OF REGISTERED AGENT AND REGISTERED OFFICE BY
A FOREIGN OR DOMESTIC CORPORATION OF ILLINOIS

STATE OF ILLINOIS
COOK COUNTY } ss.

TO Alan Dixon
Secretary of State,
Springfield, Illinois

The undersigned corporation, organized and existing under the laws of the State of ILLINOIS
for the purpose of changing its registered agent and its registered office, or both, in Illinois as provided
by "The Business Corporation Act," of Illinois represents that:

1. The name of the corporation is AERO PLATING WORKS, INC.

2. The address, including street and number, if any, of its present registered office (before change)
is 33 N. LaSalle Street, Chicago, IL 60602

3. Its registered office (including street and number if any change in the registered office is to
be made) is hereby changed to 30 N. LaSalle Street.
in the City of Chicago (60602) County of Cook
(Zip Code)

4. The name of its present registered agent (before change) is
PAUL H. VISHNY

5. The name of the new registered agent is
PAUL H. VISHNY

6. The address of its registered office and the address of the business office of its registered agent, as
changed, will be identical.

7. Such change was authorized by resolution duly authorized by the board of directors.

(OVER)

PAID

NOV 15 1977

ALAN J. DIXON
Secretary of State

IN WITNESS WHEREOF, the undersigned corporation has caused this report to be executed in its name by its Vice President, attested by its Secretary, this 11th day of November, A. D. 1977

AERO PLATING WORKS, INC.

(Exact Corporate Title)

By [Signature]
President or Vice-President

Place
(Corporate Seal)
Here

Attest:

[Signature]
Secretary or Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.

I, Mary L. Weldzius, a Notary Public, do hereby certify that on the 11th day of November, A. D. 1977, personally appeared before me Louis J. Maiorano, Jr. who declares he is Vice President of the corporation, executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Place
(Notarial Seal)
Here

[Signature]
Notary Public

Form BQA (12 or 110)

Box 3288 File 246-4

CHANGE OF REGISTERED AGENT
AND OFFICE OF

[Signature]
[Signature]

Filing Fee \$1.00

NOTICE

This certificate must be filed in duplicate. The corporation cannot act as its own registered agent.

The registered office may be, but need not be, the same as the place of business of the corporation, but the registered office and the address of the registered agent must be the same.

Any subsequent change in the registered office or agent must be reported immediately to the Secretary of State on blanks furnished for that purpose.

FILED

NOV 15 1977

[Signature]
Secretary of State

COOK
County

STATE OF ILLINOIS
Office Of
THE SECRETARY OF STATE

3282-240-4
File Number

CERTIFICATE OF DISSOLUTION OF DOMESTIC CORPORATION

WHEREAS it appears that

AERO PLATING WORKS, INC.
% PAUL H. VISHNY
30 N. LASALLE ST.
CHICAGO, ILLINOIS 60602

FILED
8-31-84

being a corporation organized under the laws of the State of Illinois relating to Domestic Corporations, has failed to FILE AN ANNUAL REPORT AND PAY AN ANNUAL FRANCHISE TAX as required by the provisions of "The Business Corporation Act" of the State of Illinois, in force July 13, A.D. 1933, and all acts amendatory thereof; AND WHEREAS, said acts provided that upon failure to, FILE AN ANNUAL REPORT AND PAY AN ANNUAL FRANCHISE TAX the Secretary of State shall dissolve the corporation pursuant to Section 82A effective July 1, 1974.

NOW THEREFORE, I, Alan J. Dixon, Secretary of State of the State of Illinois, hereby dissolve the said

AERO PLATING WORKS, INC.

in pursuance of the provisions of the aforesaid Act.



IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. done at the City of Springfield,

this 15 day of DECEMBER A.D. 1980

Alan J. Dixon
Secretary of State

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: USA v MAIORANO

FROM: Charles McKinley, ARC *CMK*

CA # 87-C-4491
USDC, N.D.IL

TO: Tom Daggett, Section Chief

Attached is a draft consent decree in the above-captioned matter. Would you, as well as the others receiving a copy of this, please provide comments to me by 10/8/87. A settlement conference is scheduled with the judge for 10/23, and I need to get the proposed consent agreement out to the U.S. Attorney, DOJ, and Headquarters by 10/9/87.

In addition to any other suggestions, I would appreciate input on the following subjects:

1. Waiver of Superfund claim: Paragraph XI is lifted from another recent Consent Decree which I used as a model. Is this a provision which ought to be included in Consent Decrees, generally, or was it peculiar to the other matter?

2. Penalty: Paragraph VIII proposes \$75,000 penalties, per defendant, for their failure to undertake the requirements of the ALJ order and to supply the information solicited by the subsequent EPA request. The theory for the amount proposed is that there are three discrete actions which defendants failed to perform: a. proper removal of the wastes from the facility (paragraphs VI, 1a.-e); b. submittal of a closure plan and closure (paragraph VI, 3); and c. failure to provide the information requested (paragraph VI, 4), each to be assessed at \$25,000. (It seems to me that the failure to pay the penalty imposed by the ALJ ought to be addressed through the imposition of interest, as suggested in VII 5, 6).

The proposed \$75,000 per defendant is a suggested negotiating position. Ellen Carpenter circulated an earlier memo suggesting an "initial" total penalty of \$78,250. Comments were received, however, suggesting that this should be the "bottom line". It is my expectation, after getting a sense of these defendants from reviewing the file, that we are unlikely to get an amount, by consent, even closely approaching either of these figures.

This realistically is too high of a "bottom line". I would be happy with \$10,000 from each as a true bottom line. However, let's start the negotiations at \$75,000.

→ C. McKinley, ORC

cc: R. Brown ✓
J. Rittenhouse

Wm. C. [unclear]
10-8-87

EX-101
FTI
[unclear]

Seems to me to be N/A to this case.

I am advised by the DOJ, USA, and EPA attorneys who attended the status hearing with the judge that the Court wants the case settled. The defendants, who also know this, are not likely to settle at an amount approximating the above figures. It is my view, if that is the case, that we should move for partial summary judgment, in short order, on the equitable portions of our complaint, (and perhaps the ALJ penalty amount), and defer the civil penalties for subsequent resolution.

most
judges
say
this

A couple of other factors which might affect the penalty are present. The defendants have asserted that they have removed the wastes, properly, and they have plead poverty. The court allowed the defendants 90 days (10/14/87 being the deadline) to provide evidence to substantiate these claims. If the first claim is credibly substantiated, then the penalty amount probably should be reduced. Apparently, the ALJ bought the financial argument by Maiorano, Jr., but not that of Sr. If we are furnished with information on their financial condition as bogus as that which Jr. adduced at the administrative hearing, I would suggest that we undertake a thorough, independent investigation of their financial conditions. Have we investigators who possess the kinds of skills necessary to find hidden assets?

Yes, thru the TEs contact, but it's slow.

It is my understanding that we have no clear policy on amounts to be sought, nor factors to be considered, in seeking civil penalties for a failure to comply with a final Agency order. Please advise if I am misinformed.

not
Comment,
RERA
Civil
Penalty
Policy
applies

In order to focus any comments on the penalty issue, I am also enclosing Ellen Carpenter's earlier memo on this subject, to which the following comments were received:

D. Ullrich: query whether figure shouldn't be "bottom line", rather than "initial proposal".

R. Field: concurs, except there is no consideration of economic benefit derived, which requires further discussion.

R. Schaefer: concurs, generally. Inquires whether we ought not to be able to get an immediate judgment for ALJ penalty amount.

W. Munro: move narrative comments on penalty sheet to justification sheet.

cc: M. Elam
D. Ullrich
R. Schaefer
J. Rittenhouse (5HE-12)
R. Brown (5HE-12)
✓ W. Munro (5HE-12)

DRAFT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO. 87-C-4491
)	
v.)	JUDGE ROYNER
)	
LOUIS J. MAIORANO, SR. and)	
LOUIS J. MAIORANO, JR. <i>da/b/wa</i>)	
)	
AERO PLATING WORKS, INC.)	
)	

CONSENT DECREE

I.

INTRODUCTION

Plaintiff, United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this action on May 8, 1987, alleging that Defendants, LJM Sr. and LJM Jr. d/b/a Aero Plating Works, Inc. ("the Maioranos" or "Defendants"), owned and/or operated a facility which generated and stored hazardous waste in violation of certain provisions of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., regulations promulgated under RCRA, codified at 40 C.F.R. Parts 262 and 265, and the terms and conditions of a Decision and Order issued by an Administrative Law Judge on February 13, 1986, and further alleging that defendants failed to provide information sought by an EPA request for information under 42 U.S.C. § 6927;

spell out

✓

Plaintiff and Defendants having agreed that settlement of this matter is in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

THEREFORE, UPON THE CONSENT TO THE PARTIES TO THIS DECREE, IT IS ORDERED AND DECREED AS FOLLOWS:

II.

JURISDICTION

This Court has jurisdiction over the subject matter of this action, pursuant to Section 3008^a(~~A~~) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355, and over the parties consenting hereto.

III.

BACKGROUND

A. Defendant Louis J. Maiorano^o, Sr. is an individual who owns the property on which an electroplating business known as Aero Plating Works, Inc. was conducted. Louis J. Maiorano, Sr. leased the property to Louis J. Maiorano, Jr. → Louis J. Maiorano, Jr. is an individual who owned and operated Aero Plating Works, Inc., which was located at 1860 North Elston Avenue, Chicago, Illinois ("the Aero Plating facility"). Aero Plating Works, Inc. was an Illinois corporation involuntarily dissolved by the State of Illinois in 1980. Aero Plating Works, Inc. was reinstated as an Illinois corporation on August 31, 1984, and was again dissolved on May 1, 1986.

B. Operation of the Aero Plating facility resulted in the generation and storage of chromium (EPA Hazardous Waste No. D007), wastewater treatment sludges from electroplating operations (EPA Hazardous Waste No. F006), and spent stripping and cleaning bath solutions from electroplating operations in which cyanides are used in the process (EPA Hazardous Waste No. F009). These wastes are "hazardous wastes" within the meaning of Section 3001 of RCRA, 42 U.S.C. § 6921, and 40 C.F.R. §§ 261.24 and 261.31.

C. Aero Plating Works, Inc. was a "generator" of, and a "treatment, storage, and disposal facility" for, hazardous wastes within the meaning of 40 C.F.R. § 260.10.

D. Defendant Louis J. Maiorano, Sr. is an "owner" of the Aero Plating facility within the meaning of 40 C.F.R. § 260.10.

E. Defendant Louis J. Maiorano, Jr. is an "owner" and "operator" of the Aero Plating facility within the meaning of 40 C.F.R. § 260.10.

F. On September 7, 1984, U.S. EPA issued to Defendants an Administrative Complaint and Compliance Order, Docket No. V-W-84-R-071, as authorized by Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1). The Complaint and Compliance Order alleged that Defendants failed to comply with numerous hazardous waste permitting ^{and operating} requirements pursuant to RCRA and federal and state regulations. The Complaint and Compliance Order required Defendants, inter alia, to submit an approvable

closure plan for the Aero Plating facility, to complete closure in accordance with the approved plan, to comply with state requirements for off-site transportation of hazardous waste pursuant to 35 Ill. Adm. Code §§ 722.120(a), 722 .130, 722.131, 722.132(b), and 722.133, and to pay civil penalties.

G. On July 30 and 31, 1985, an administrative hearing was held before Administrative Law Judge Gerald Harwood. On February 13, 1986, ALJ Harwood issued an Order (the "ALJ Order") requiring Louis J. Maiorano, Jr. to pay a civil penalty of \$3,500 and holding Defendants jointly and severally liable for an additional civil penalty of \$18,500. The ALJ Order further required Defendants, inter alia, to submit within thirty (30) days a closure plan for U.S. EPA approval, to complete closure within thirty (30) days of such approval, and to comply with Illinois regulations regarding off-site transportation of hazardous waste.

H. The ALJ Order contained findings of fact regarding, inter alia, (a) Defendants' storage, after November 19, 1980, of hazardous waste at the Aero Plating facility for periods of longer than 90 days without a permit or interim status, (b) Defendants' leasing to new tenants a portion of the Aero Plating facility even though hazardous waste drums and other contaminants remained in the facility, and (c) Defendants' failure to submit an approvable closure plan to U.S. EPA and the Illinois Environmental Protection Agency.

I. On February 21, 1986, one provision of the February 13, 1986 ALJ Order, not at issue here, was modified. Pursuant to 40 C.F.R. § 22.27(c), on April 13, 1986, the ALJ Order became a final decision of the Administrator of U.S. EPA ("the U.S. EPA Order"). A copy of the U.S. EPA Order is attached hereto as Exhibit A and incorporated by reference as if fully set forth. Defendants were notified that they had thirty (30) days from receipt of the U.S. EPA Order to comply with the provisions of the Order, and sixty (60) days to pay the assessed civil penalty.

J. Defendants failed either to submit to U.S. EPA an approvable closure plan or to complete closure activities as required by the U.S. EPA Order and failed to pay ordered civil penalties.

K. On February 3, 1987, pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, U.S. EPA requested, by certified letter, that Defendants provide certain information concerning the Aero Plating facility. Defendants were given seven (7) days, from receipt of the letter, to respond to the request. A copy of the letter ^{is attached hereto as Exhibit B.} ~~as if fully set forth.~~

L. U.S. EPA issued the February 3, 1987 request for information in order to enforce the provisions of RCRA and the U.S. EPA Order.

M. Defendants have failed to comply with U.S. EPA's said request for information.

IV.

DEFINITIONS

A. All terms used in this Consent Decree that are defined in RCRA or 40 C.F.R. Parts 260-271, shall have the meanings set forth in such definitions.

B. The terms "ALJ Order" and "U.S. EPA Order" refer to the Decision and Order dated February 13, 1986, as amended, which became a final decision of the Administrator of the U.S. EPA, and which is attached hereto as Exhibit A.

C. The terms "premises" and "facility" refer to that real property, including structural improvements located thereon, commonly known as 1860 N. Elston Avenue, Chicago, (IL) 60622.

spell out

V.

APPLICATION

The provisions of this Consent Decree shall apply to and be binding up^{on} to the parties to this action, their officers, directors, agents, employees, successors, assigns and all persons, firms, entities and corporations who are or will be acting in concert or privity with them. The defendants shall be responsible for complying with the terms of the Consent Decree and for providing a copy of this Consent Decree to any and all persons, firms contractors and/or consultants acting on their behalf. In the event that Defendants propose to sell or transfer their real property or operations subject to this

Consent Decree, Defendants shall, prior to such sale or transfer, *notify such purchaser or transferee of the existence and terms of this Decree, and shall notify* at least two weeks in advance thereof.

*Even if all the Hw is gone,
we still want them to
go thru the procedural
steps of cleanup.*

VI.

COMPLIANCE ACTIVITIES

1. Defendants shall immediately commence the following activities, with regard to any and all hazardous waste which is present on the premises, all of which shall be completed within ten (10) days from the entry of this Consent Decree:

a. Prepare manifests prior to the off-site transportation of such hazardous waste as required by 35 Ill. Adm. Code § 722.120(a).

b. Package such hazardous waste according to applicable Department of Transportation regulations (49 C.F.R. Parts 173, 178 and 179) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.130.

c. Label each drum of such hazardous waste in accordance with applicable Department of Transportation regulations (40 C.F.R. Part 172) prior to transportation off-site as required by 35 Ill. Adm. Code § 722.131.

d. Prior to shipping such hazardous waste off-site, mark each container of 110-gallon capacity or less with the following words as required by 35 Ill. Adm. Code § 722.132(b):

even if such proposed sale or

"HAZARDOUS WASTE----Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.
Manifest Document Number _____.

e. Offer the transporter placards according to Department of Transportation regulations (49 C.F.R. Part 172, Subpart F) as required by 35 Ill. Adm. Code § 722.133.

2. Defendants shall immediately cease all treatment, storage, or disposal of hazardous waste at the facility, and are hereby enjoined from undertaking such activities unless they ^{shall}~~still~~ have obtained the approvals required by U.S. EPA and the State of Illinois EPA.

✓ 3~~a~~ → Defendants shall submit to the Illinois EPA and to the U.S. EPA a closure plan for the facility which shall meet the standards for such plans contained in 35 Ill. Adm. Code § 725.210, as determined by the ^{Ill. Adm. Code} EPA, and which shall detail the activities to be accomplished and that have already been accomplished by the Defendants to remove and properly dispose of or otherwise handle the hazardous waste at the facility. Said plan shall be submitted within ten (10) days from the entry of this Consent Decree. If said plan is determined by ^{the Illinois} EPA to be inadequate, Defendants shall make any revisions required by ^{the Illinois} EPA and submit a revised closure plan within ^{the Illinois} ten (10) days from the date that they are notified by ^{the Illinois} EPA that revisions are required.

✓ b. Within 30 days of ^{Illinois} EPA approval of ^{the} closure plan, Defendants shall complete closure of the facility, in accordance with the approved closure plan, and shall submit a certification of closure ^{to the Illinois EPA}, as required by 35 Ill. Adm. Code § 725.215.

4. Within 10 days of the entry of this Consent Decree, Defendants shall provide the information requested by the U.S. EPA in its Information Request dated February 3, 1987, *a copy of* and which is attached hereto as Exhibit B.

~~VII~~

MONETARY JUDGMENT

5. Judgment is hereby entered against the defendants, jointly and severally, in the amount of eighteen thousand five hundred dollars (\$18,500), together with interest ^{at} of the prevailing rate(s) as provided at ³¹ ~~28~~ U.S.C. § ³⁷¹⁷ ~~1961~~, commencing on April 28, 1986;

6. In addition, judgment is hereby entered against defendant Louis J. Maiorano, Jr. in an additional amount of three thousand five hundred dollars (\$3,500) together with interest at the prevailing rate(s) as provided by ³¹ ~~28~~ U.S.C. § ³⁷¹⁷ ~~1961~~, commencing on April 28, 1986;

~~VIII~~

CIVIL PENALTY -

See comments on p. 1

✓
Spillover

7. Defendant LJM, Sr. shall pay a civil penalty of seventy-five thousand dollars (\$75,000), within 30 days ^{of} at the entry of this consent decree, *for his failure to comply with the ALJ order and the Request for Information.*

8. Defendant LJM Jr. shall pay a civil penalty of seventy-five *split out* thousand dollars (\$75,000), within 30 days of the entry of this consent decree, *for his failure to comply with the ALJ order and with the Request for Information.*

9. Should defendants fail to pay said civil penalties as aforesaid, interest shall accrue from the date the payment is due to date of payment, at the then-prevailing rates, as provided at 28 U.S.C. § 1961.

10. *Should we use the EPA lock box system?* Payment of all amounts, as aforesaid, shall be by certified check, payable to the "Treasurer, United States of America", and shall be delivered to: United States Attorney's Office, Northern District of Illinois. At the time of payment, a photocopy of such check shall be sent to the Office of Regional Counsel, U.S. EPA Region V, 230 South Dearborn Street, SCS-TUB-3, Chicago, Illinois 60604.

→ *Stipulated Penalties for Failure to Perform. regional cleanup activities*

IX.

RESERVATION OF RIGHTS

A. By this Consent Decree, Plaintiff does not waive any right or remedy available to it for any violation by Defendants of Federal or State laws, regulations or permits relating to violations not specifically alleged in the Complaint. Plaintiff specifically reserves, and this Consent Decree is without prejudice to, the right to take any enforcement action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq. as amended by the Superfund Amendment and Reauthorization Act, Pub L. 99-499.

B. Plaintiff reserves any and all legal and equitable remedies available to enforce the provisions of this Decree.

✓ C. This Decree does not limit the authority of the United States⁺ to undertake any action against any person, including Defendants, in response to conditions which may present an imminent and substantial endangerment to public health, welfare, or the environment.

XI.

SUBMITTALS

A. Any report or other document required by this Consent Decree to be submitted to U.S. EPA or to the Illinois EPA, shall be mailed or otherwise delivered to the following persons, ^{respectively} ~~regarding~~, at the addresses specified below:

✓ ~~Chief~~ William E. Mann, Chief
RCRA Enforcement Section, SHE-12
U.S. Environmental Protection
Agency Region V
230 South Dearborn Street
Chicago, Illinois 60604

✓ ~~Chief~~ Larry Eastep, Chief
> ~~Permits Section~~ Division of Land Pollution Control
Illinois EPA
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois

✓ B. All plans and reports required to be developed or implemented by this Consent Decree shall be deemed incorporated into this Consent Decree immediately upon ^{Illinois} EPA approval and ^{Illinois} EPA communication of approval to Defendants.

~~XII.~~

PRECLUSION OF CLAIMS AGAINST THE
HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

Defendants agree not to make any claims pursuant to Section 111 and 112 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9611 and 9612, or any other provision of law directly or indirectly against the Hazardous Substance Response Trust Fund established by CERCLA for costs incurred in complying with this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.25(d). This Consent Decree, however, shall not be construed to prejudice any claim the Defendants may have that all expenditures made to comply with this Consent Decree are consistent with the National Contingency Plan and thus recoverable from persons found to be within the scope of Section 104 of CERCLA.

~~XIII.~~

COSTS

Defendants shall bear the costs of this action and each party shall bear his or its own attorneys' fees.

~~XIV.~~

RETENTION OF JURISDICTION

A. This Court shall retain jurisdiction to enforce or modify the terms and conditions of this Consent Decree and to resolve any disputes arising hereunder.

B. Plaintiff and Defendant each retain the right to seek to enforce the terms of this Consent Decree.

~~XIV~~
XVII.

NOTICE REQUIREMENTS

The parties acknowledge that final approval by the United States and the entry of this Consent Decree are subject to the requirement of 28 C.F.R. § 50.7, which requires public notice of this Consent Decree and opportunity for public comment .

UNITED STATES OF AMERICA
Plaintiff

LJM, SR. *spell out*
Defendant

Assistant Attorney General
Land and Natural Resources
Division
~~U.S. Department of Justice~~
~~10th St. and Penn Ave. N.W.~~
~~Washington, D.C. 20530~~

LJM, JR. *spell out*
Defendant

ANTON R. VALUKAS
United States Attorney
Northern District of Illinois

ANN L. WALLACE
Assistant United States
Attorney
Northern District of Illinois
United States Courthouse
219 South Dearborn Street
Chicago, Illinois 60604

ANNA SWERDEL
U.S. Department of Justice
Environmental Enforcement
Section
~~P.O. Box 7611~~ ~~10th St. and Penn. Ave., N.W.~~
~~Ben Franklin Station~~
Washington, D.C. ~~20044~~
20530

THOMAS L. ADAMS, JR.
Assistant Administrator
Enforcement and Compliance
Monitoring
U.S. Environmental
Protection Agency

VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental
Protection Agency
Region V

✓
Judgement entered this _____ day of _____,
1987.

United States District Judge

CMcKinley/MCampbell:10/2/87/6-9032:disk#1

To: Ellen Carpenter, 5C-16

copies for R. Brown + J. Rittenberg

WEM
7-20-87



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

15 JUL 1987

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Proposed Penalty for Maiorano Civil Action

FROM: Ellen Carpenter *EC*
Assistant Regional Counsel

TO: Addressees

Background

A RCRA Administrative Complaint was issued to Louis J. Maiorano Sr. and Louis J. Maiorano, Jr. d/b/a Aero Plating Works, Inc. on September 7, 1984. The Complaint required the defendants to submit a closure plan, close in accordance with an approved closure plan, comply with transportation requirements and assessed an \$80,000.00 penalty for the violations. A hearing was held on July 30 and 31, 1985. The Administrative Law Judge (ALJ) issued an order which became final on April 13, 1986. The final Agency Order required the defendants to submit a closure plan for their electroplating facility, close in accordance with an approved closure plan, comply with Illinois' closure, manifest and shipping regulations, and pay a \$22,000 penalty for the RCRA violations (\$3,500.00 was assessed against Maiorano, Jr., individually and \$18,500.00 was assessed against Maiorano, Sr. and Jr., jointly and severally). The penalty was reduced by the ALJ to \$36,500.00 based upon the evidence presented. The penalty was further reduced to \$22,000.00 based upon financial data presented by Maiorano, Jr. (the operator of the facility) regarding his inability to pay the penalty. The evidence submitted by Maiorano, Sr. (the owner of the facility) did not demonstrate an inability to pay the \$18,500.00 penalty. Defendants failed to submit a closure plan or pay the assessed penalties.

A RCRA Section 3007 letter was issued to the defendants in February, 1987, requesting information relating to the transportation and disposal of hazardous wastes generated at the electroplating facility. The defendants failed to respond to the information request.

A Complaint was filed in the United States District Court, Northern District of Illinois, on May 18, 1987. The suit seeks to force the defendants to ¹comply with the final Agency Order, ²respond to the RCRA Section 3007 Information Request, ³pay penalties for failure to comply with the final Agency Order, and ⁴pay penalties for failure to respond to the information request.

The United States Department of Justice (DOJ) attorney has requested U.S. EPA to advise her regarding the penalty amount we are seeking in this matter.

Proposed Penalty

The penalty should be based upon two violations: 1) the defendants' failure to comply with the final Agency Order; and 2) the defendants' failure to respond to the Section §3007 Information Request.

The attached penalty computation worksheets reflect that the proposed penalty for the failure to comply with a final Agency Order has two elements. The first element is the penalty amount chosen based upon the seriousness of the violation (\$22,500.00). The second element consists of a penalty adjustment for the penalty assessed in the final Agency Order (\$22,000.00) which was set out separately in the complaint's prayer for relief but is included here for purposes of clarification and a penalty adjustment for lack of good faith (\$5,625.00). Therefore, the total penalty proposed for the defendants' failure to comply with the final Agency Order is \$50,125.00. This penalty does not include any consideration of the economic benefit to the defendants for failing to close the facility as required because of lack of information. (See attached memo dated July 1, 1987).

The penalty proposed for the defendants' failure to comply with the Section 3007 Information Request consists of \$22,500 for the seriousness of the violation and a penalty adjustment of \$5,625.00 for lack of good faith. The total penalty proposed for failure to respond to the information request is \$28,125.00.

I recommend that U.S. EPA initially propose a total penalty of \$78,250.00 in this matter. Please signify your concurrence or nonconcurrence with my recommendation by COB July 24, 1987.

Wm. E. Muen
I concur

I do not concur

*w/comments as noted
on the attached penalty
sheets. Make these
changes prior to transmittal
to DOJ.*

Addressees: T. Daggett
R. Field
D. Ullrich
R. Schaefer
J. Rittenhouse (5HE-12)
R. Brown (5HE-12)
B. Muno (5HE-12)

Company Name: AERO PLATINGRegulation Violated: FAILURE TO COMPLY WITH THE ALJ DECISION

Penalties for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: \$20,000 - \$25,000
- Penalty Amount Chosen: \$22,500

Justification for Penalty Amount Chosen:

Midpoint

[Facility has failed to comply with the ALJ decision of February 13, 1986]

Per-Day Assessment: _____

Part II - Penalty Adjustments

Percentage Change

Dollar Amount

Good faith efforts to comply/lack of good faith:

+ 25% +5,625

explain rationale on JS.

4. Degree of willfulness and/or negligence:

5. History of Noncompliance:

Other Unique Factors:

Justification for Adjustments:

[for the AO penalty assessed in the ALJ's decision (2/13/86)]

6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):

~~22,500~~ 50,125

7. Number of Days of Violation:

8. Multi-day Penalty (Number of days X Line 6, Part II):

9. Economic Benefit of Noncompliance:

-0-

Justification:

10. Total (Lines 8 + 9, Part II):

50,125

11. Ability to Pay Adjustment:

Justification for Adjustment:

-0-

12. Total Penalty Amount (must not exceed \$25,000 per day of violation):

\$50,125

Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

move
to
JS.move
to
JS.

Attach justification sheet

Company Name: AERO PLATINGRegulation Violated: FAILURE TO COMPLY WITH §3007 INFORMATION REQUEST

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR

2. Extent of Deviation: MAJOR

3. Matrix Cell Range: \$20,000 — \$25,000

Penalty Amount Chosen: \$22,500

Justification for Penalty Amount Chosen: Midpoint [FAILURE OF FACILITY TO SUBMIT AND ANSWER THE §3007 REQUEST OR]

4. Per-Day Assessment: _____

Part II - Penalty Adjustments

Percentage Change * Dollar Amount

Good faith efforts to comply/lack of good faith:

+ 25% + \$5,625

Degree of willfulness and/or negligence:

History of Noncompliance:

Other Unique Factors:

Justification for Adjustments:

FACILITY HAS SHOWN A STRONG LACK OF GOOD FAITH ~~WILL~~ - NO EFFORT TO COMPLY WITH §3007 REQUEST

Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):

~~22,500~~ 28,125

Number of Days of Violation:

Multi-day Penalty (Number of days X Line 6, Part II):

Economic Benefit of Noncompliance:

- 0 -

Justification:

Total (Lines 8 + 9, Part II):

28,125

Ability to Pay Adjustment:

- 0 -

Justification for Adjustment:

Total Penalty Amount
(must not exceed \$25,000 per day of violation):

28,125

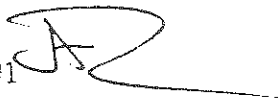
Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

move to T.S.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

DATE: 01 JUL 1987

SUBJECT: Aero Plating Referral - Penalty Amount

FROM: Jim Rittenhouse
Enforcement Programs Unit #1 

TO: Ellen Carpenter, Assistant Regional Counsel
Office of Regional Counsel

After a review of the available information, I feel that the present closure cost information is too inadequate to be used in a BEN calculation for penalty imposition.

My suggestion is that, in accordance with the penalty policy, the figures first arrived at by Oliver Warnsley (and since amended through consultation with your office) will suffice for transmittal to the Department of Justice as a suggested penalty amount. The penalty computation worksheets are attached.

Attachment

Assessments for each violation should be determined on separate worksheets and totalled.

1. Potential for Harm:	<u>MAJOR</u>
2. Extent of Deviation:	<u>MAJOR</u>
3. Matrix Cell Range:	<u>\$20,000 - \$25,000</u>
Penalty Amount Chosen:	<u>\$22,500</u>
Justification for Penalty Amount Chosen:	Midpoint
4. Per-Day Assessment:	

	<u>Percentage Change</u>	<u>Dollar Amount</u>
1. Good faith efforts to comply/lack of good faith:	_____	_____
2. Degree of willfulness and/or negligence:	+ 25%	\$5,625
3. History of Noncompliance:	_____	_____
4. Other Unique Factors:	_____	_____
Justification for Adjustments:	Both the September 10, 1984, Administrative Compliance Order and the February 1985 Order required submission of a closure plan. One was not submitted until October 1985. This case had been referred to U.S. District Court.	
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		\$28,125
7. Number of Days of Violation:		_____
8. Multi-day Penalty (Number of days X Line 6, Part II):		_____
9. Economic Benefit of Noncompliance:		- 0 -
Justification:		

Both the September 10, 1984, Administrative Complaint and Compliance Order and the February 13, 1986, ALJ decision required submission of a closure plan within 30 days. However, one was not submitted until October 14, 1987, i.e. after the case had been referred to U.S. district court.

10: Total (Lines 8 + 9, Part II):	\$28,125
11. Ability to Pay Adjustment:	
Justification for Adjustment:	- 0 -
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):	\$28,125

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraph II. 2a. of ALJ Decision (page 23)

-Submittal of a closure plan as described in 35 Ill. Adm. Code 725.210 within 30 days from service of the ALJ Decision.

POTENTIAL FOR HARM CATEGORY:

Failure to meet this requirement does not pose direct harm to human health or the environment by itself. However, noncompliance has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Specifically, without an adequate closure plan closure of a facility may not be properly conducted. This may result in serious amounts of hazardous waste remaining on site and potential harm to the health of workers. The facility is also located in an urbanized area which poses potential harm to local residents. Such a delay in submitting a closure plan and adequately closing a facility causes hazardous waste to remain on-site longer and to increase the likelihood of exposure to humans and the environment.

In 1984, at least, a portion of the facility was rented to a new tenant even though drums of hazardous waste were still scattered throughout the facility. On October 27, 1987, U.S. EPA visited the facility to determine its general status and occupancy. The facility had not completed closure and a public coffeehouse/bookstore was being opened on the site.

EXTENT OF DEVIATION CATEGORY:

A closure plan was not submitted within 30 days of the ALJ's decision, i.e., by May 13, 1986, as required by that Decision. It was not submitted until October 14, 1987. The respondent has shown a long history of deliberate non-compliance in this matter over a period of years.

PENALTY ASSESSED THIS VIOLATION: \$28,125

Assessments for each violation should be determined on separate worksheets and totalled.

Part 1 - Seriousness of Violation Penalty

- | | |
|--|----------------------------|
| 1. Potential for Harm: | <u>MAJOR</u> |
| 2. Extent of Deviation: | <u>MAJOR</u> |
| 3. Matrix Cell Range: | <u>\$20,000 - \$25,000</u> |
| Penalty Amount Chosen: | <u>\$22,500</u> |
| Justification for Penalty Amount Chosen: | Midpoint |
| 4. Per-Day Assessment: | |

Part II - Penalty Adjustments

- | | <u>Percentage Change</u> | <u>Dollar Amount</u> |
|--|--|----------------------|
| 1. Good faith efforts to comply/lack of good faith: | | |
| 2. Degree of willfulness and/or negligence: | + 25% | \$5,625 |
| 3. History of Noncompliance: | | |
| 4. Other Unique Factors: | | |
| Justification for Adjustments: | Both the September 10, 1984, Admin Compliance Order and the February required submission of a closure one was not submitted until October case had been referred to U.S. district court. | |
| 5. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): | | \$28,125 |
| 6. Number of Days of Violation: | | |
| 7. Multi-day Penalty (Number of days X Line 6, Part II): | | |
| 8. Economic Benefit of Noncompliance: | | - 0 - |

Both the September 10, 1984, Administrative Complaint and Compliance Order and the February 13, 1986, ALJ decision required submission of a closure plan within 30 days. However, one was not submitted until October 14, 1987, i.e. after the case had been referred to U.S. district court.

\$28,125

- | | |
|---|-----------------|
| Justification: | |
| 10. Total (Lines 8 + 9, Part II): | <u>\$28,125</u> |
| 11. Ability to Pay Adjustment: | |
| Justification for Adjustment: | <u>- 0 -</u> |
| 12. Total Penalty Amount
(must not exceed \$25,000 per
day of violation): | <u>\$28,125</u> |

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraph II. 2a. of ALJ Decision (page 23)
-Submittal of a closure plan as described in 35 Ill. Adm. Code 725.210
within 30 days from service of the ALJ Decision.

POTENTIAL FOR HARM CATEGORY:

Failure to meet this requirement does not pose direct harm to human health or the environment by itself. However, noncompliance has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Specifically, without an adequate closure plan closure of a facility may not be properly conducted. This may result in serious amounts of hazardous waste remaining on site and potential harm to the health of workers. The facility is also located in an urbanized area which poses potential harm to local residents. Such a delay in submitting a closure plan and adequately closing a facility causes hazardous waste to remain on-site longer and to increase the likelihood of exposure to humans and the environment.

In 1984, at least, a portion of the facility was rented to a new tenant even though drums of hazardous waste were still scattered throughout the facility. On October 27, 1987, U.S. EPA visited the facility to determine its general status and occupancy. The facility had not completed closure and a public coffeehouse/bookstore was being opened on the site.

EXTENT OF DEVIATION CATEGORY:

A closure plan was not submitted within 30 days of the ALJ's decision, i.e., by May 13, 1986, as required by that Decision. It was not submitted until October 14, 1987. The respondent has shown a long history of deliberate non-compliance in this matter over a period of years.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Sr., Aero Plating Works

Regulation Violated: Paragraph II. 2b and III of ALJ Decision (closure certification and proper handling of hazardous waste during closure)
Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

- | | |
|--|---------------------|
| 1. Potential for Harm: | MAJOR |
| 2. Extent of Deviation: | MAJOR |
| 3. Matrix Cell Range: | \$20,000 - \$25,000 |
| Penalty Amount Chosen: | \$22,500 |
| Justification for Penalty Amount Chosen: | Midpoint |
| 4. Per-Day Assessment: | |

Part II - Penalty Adjustments

- | | <u>Percentage Change</u> | <u>Dollar Amount</u> |
|--|--|----------------------|
| 1. Good faith efforts to comply/lack of good faith: | _____ | _____ |
| 2. Degree of willfulness and/or negligence: | + 25% | \$5,625 |
| 3. History of Noncompliance: | _____ | _____ |
| 4. Other Unique Factors: | _____ | _____ |
| 5. Justification for Adjustments: | No evidence of closure or the proper waste during closure has been submitted. 1986, ALJ Decision | |
| 6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): | | \$28,125 |
| 7. Number of Days of Violation: | | _____ |
| 8. Multi-day Penalty (Number of days X Line 6, Part II): | | _____ |
| 9. Economic Benefit of Noncompliance: | | - 0 - |

No evidence of closure or the proper management of hazardous waste during closure has been submitted since the February 13, 1986, ALJ Decision

6. Adjusted Per-day Penalty (Line 4,
Part I + Lines 1-4, Part II): \$28,125
7. Number of Days of Violation:
8. Multi-day Penalty (Number of days X
Line 6, Part II):
9. Economic Benefit of Noncompliance: - 0 -

Justification:

- | | |
|-----------------------------------|-----------------|
| 10: Total (Lines 8 + 9, Part II): | <u>\$28,125</u> |
| 11. Ability to Pay Adjustment: | - 0 - |
| Justification for Adjustment: | |

Justification for Adjustment:

12. Total Penalty Amount
(must not exceed \$25,000 per
day of violation): \$28,125

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraph II. 2b. and II. 3. of ALJ Decision (pages 23 & 24)

- closure of the facility according to an approved closure plan and submittal of a certification of closure as required by 35 Ill. Adm. Code 725.215.
- in closing the facility, hazardous waste will be handled in the manner prescribed by Illinois regulations: manifesting [35 Ill. Adm. Code 725.120(a)], packaging [35 Ill. Adm. Code 722.130], labelling [35 Ill. Adm. Code 722.132(b)], and transporter placards [35 Ill. Adm. Code 722.133].

POTENTIAL FOR HARM: MAJOR

Without proper packaging, labelling, marking and placarding of hazardous waste during the closure of a facility, there is a substantial likelihood of exposure to workers involved in the closure and to area residents from spills and accidents. Without manifesting and a certification of closure by the owner or operator and an independent registered professional engineer, there is a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Without manifesting, the regulatory agencies do not know if the hazardous wastes removed during closure have been properly disposed. Without an independent engineer's closure certification, the regulatory agencies do not know if closure has been completed according to an approved closure plan.

EXTENT OF DEVIATION: MAJOR

Despite the Administrative Law Judge's (ALJ) order to this effect, the respondent has failed to show any evidence of a proper closure of the facility or the proper handling of hazardous waste in any partial closure which may have taken place.

PENALTY ASSESSED THIS VIOLATION: \$28,125

Penalty Computation Worksheet

Company Name: Louis J. Maiorano, Jr., d/b/a Aero Plating Works

Regulation Violated: Paragraph II. 2b. and III of ALJ Decision (closure certification and proper handling of hazardous waste during closure)
 Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: \$20,000 - \$25,000
 Penalty Amount Chosen: \$22,500
 Justification for Penalty Amount Chosen: Midpoint
4. Per-Day Assessment: _____

Part II - Penalty Adjustments

- | | Percentage Change [*] | Dollar Amount |
|---|---|---------------|
| 1. Good faith efforts to comply/lack of good faith: | _____ | _____ |
| 2. Degree of willfulness and/or negligence: | + 25% | \$5,625 |
| 3. History of Noncompliance: | _____ | _____ |
| 4. Other Unique Factors: | _____ | _____ |
| 5. Justification for Adjustments: | No evidence of closure or the proper management of hazardous waste during closure has been submitted since the February 13, 1986, ALJ Decision. | |
| 6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): | | \$28,125 |
| 7. Number of Days of Violation: | | _____ |
| 8. Multi-day Penalty (Number of days X Line 6, Part II): | | - 0 - |
| 9. Economic Benefit of Noncompliance: | | _____ |
| Justification: | | |
| 10. Total (Lines 8 + 9, Part II): | | \$28,125 |
| 11. Ability to Pay Adjustment: | | - 0 - |
| Justification for Adjustment: | | |
| 12. Total Penalty Amount (must not exceed \$25,000 per day of violation): | | \$28,125 |

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraph II. 2b. and II. 3. of ALJ Decision (pages 23 & 24)

- closure of the facility according to an approved closure plan and submittal of a certification of closure as required by 35 Ill. Adm. Code 725.215.
- in closing the facility, hazardous waste will be handled in the manner prescribed by Illinois regulations: manifesting [35 Ill. Adm. Code 725.120(a)], packaging [35 Ill. Adm. Code 722.130], labelling [35 Ill. Adm. Code 722.132(b)], and transporter placards [35 Ill. Adm. Code 722.133].

POTENTIAL FOR HARM: MAJOR

Without proper packaging, labelling, marking and placarding of hazardous waste during the closure of a facility, there is a substantial likelihood of exposure to workers involved in the closure and to area residents from spills and accidents. Without manifesting and a certification of closure by the owner or operator and an independent registered professional engineer, there is a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Without manifesting, the regulatory agencies do not know if the hazardous wastes removed during closure have been properly disposed. Without an independent engineer's closure certification, the regulatory agencies do not know if closure has been completed according to an approved closure plan.

EXTENT OF DEVIATION: MAJOR

Despite the Administrative Law Judge's (ALJ) order to this effect, the respondent has failed to show any evidence of a proper closure of the facility or the proper handling of hazardous waste in any partial closure which may have taken place.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Sr., d/b/a Aero Plating Works
 Regulation Violated: Section 3007 of RCRA (information request by U.S. EPA)
 Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
 2. Extent of Deviation: MAJOR
 3. Matrix Cell Range: \$20,000 - \$25,000
 Penalty Amount Chosen: \$22,500
 Justification for Penalty Amount Chosen: Midpoint
 4. Per-Day Assessment: _____

Part II - Penalty Adjustments

Percentage Change Dollar Amount

1. Good faith efforts to comply/lack of good faith: + 25 % \$5,625
 2. Degree of willfulness and/or negligence: _____
 3. History of Noncompliance: _____
 4. Other Unique Factors: _____
 5. Justification for Adjustments: The respondent has shown a strong lack of good faith in refusing to comply with the information request, and has a long history of not supplying this type of documentation.
 6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): \$28,125
 7. Number of Days of Violation: _____
 8. Multi-day Penalty (Number of days X Line 6, Part II): _____
 9. Economic Benefit of Noncompliance: - 0 -
 Justification: _____
 10. Total (Lines 8 + 9, Part II): \$28,125
 11. Ability to Pay Adjustment: - 0 -
 Justification for Adjustment: _____
 12. Total Penalty Amount (must not exceed \$25,000 per day of violation): \$28,125

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Section 3007 of RCRA (February 3, 1987, information request from U.S. EPA

POTENTIAL FOR HARM: MAJOR

Failure to answer this information request does not pose any direct harm to human health or the environment. However, it has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. If regulatory agencies cannot check their information or require an answer from facility managers where information is lacking, it would be impossible to accurately determine the compliance status of a facility.

On February 3, 1987, U.S. EPA sent Section 3007 Information Requests to each respondent which requested documentation that the hazardous waste had been shipped off-site, e.g., name and address of disposal facility, type of disposal, manifests, shipping documents, or other documents relating to the transportation and disposal of hazardous wastes. Without such information, U.S. EPA has no documentation that hazardous waste has been removed and disposed.

EXTENT OF DEVIATION: MAJOR

Neither respondent has responded to the February 3, 1987, information request.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Jr., d/b/a Aero Plating Works
Regulation Violated: Section 3007 of RCRA (information request by U.S. EPA)
Assessments for each violation should be determined on separate worksheets and totalled.

Part 1 - Seriousness of Violation Penalty

1. Potential for Harm:	<u>MAJOR</u>
2. Extent of Deviation:	<u>MAJOR</u>
3. Matrix Cell Range:	<u>\$20,000 - \$25,000</u>
Penalty Amount Chosen:	<u>\$22,500</u>
Justification for Penalty Amount Chosen:	<u>Midpoint</u>
4. Per-Day Assessment:	<u></u>

Part II - Penalty Adjustments

	Percentage Change	Dollar Amount
1. Good faith efforts to comply/lack of good faith:	+ 25%	\$5,625
2. Degree of willfulness and/or negligence:		
3. History of Noncompliance:		
4. Other Unique Factors:		
5. Justification for Adjustments:	The respondent has shown a strong lack of good faith in refusing to comply with the information request, and has a long history of not supplying this type of documentation.	
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		\$28,125
7. Number of Days of Violation:		
8. Multi-day Penalty (Number of days X Line 6, Part II):		
9. Economic Benefit of Noncompliance:		- 0 -
Justification:		
10: Total (Lines 8 + 9, Part II):		\$28,125
11. Ability to Pay Adjustment:		- 0 -
Justification for Adjustment:		
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):		\$28,125

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Section 3007 of RCRA (February 3, 1987, information request from U.S. EPA.

POTENTIAL FOR HARM: MAJOR

Failure to answer this information request does not pose any direct harm to human health or the environment. However, it has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. If regulatory agencies cannot check their information or require an answer from facility managers where information is lacking, it would be impossible to accurately determine the compliance status of a facility.

On February 3, 1987, U.S. EPA sent Section 3007 Information Requests to each respondent which requested documentation that the hazardous waste had been shipped off-site, e.g., name and address of disposal facility, type of disposal, manifests, shipping documents, or other documents relating to the transportation and disposal of hazardous wastes. Without such information, U.S. EPA has no documentation that hazardous waste has been removed and disposed.

EXTENT OF DEVIATION: MAJOR

Neither respondent has responded to the February 3, 1987, information request.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Jr., d/b/a Aero Plating Works
 Regulation Violated: Paragraph II. 2a. of ALJ Decision (submittal of a closure plan)

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm:	<u>MAJOR</u>
2. Extent of Deviation:	<u>MAJOR</u>
3. Matrix Cell Range:	<u>\$20,000 - \$25,000</u>
Penalty Amount Chosen:	<u>\$22,500</u>
Justification for Penalty Amount Chosen:	<u>Midpoint</u>
4. Per-Day Assessment:	<u></u>

Part II - Penalty Adjustments

	<u>Percentage Change*</u>	<u>Dollar Amount</u>
--	---------------------------	----------------------

1. Good faith efforts to comply/lack of good faith:	<u></u>	<u></u>
2. Degree of willfulness and/or negligence:	<u>+ 25%</u>	<u>\$5,625</u>
3. History of Noncompliance:	<u></u>	<u></u>
4. Other Unique Factors:	<u></u>	<u></u>
5. Justification for Adjustments:	Both the September 10, 1984, Administrative Complaint and Compliance Order and the February 13, 1986, ALJ decision required submission of a closure plan within 30 days. However, one was not submitted until October 14, 1987, i.e. after the case had been referred to U.S. district court.	
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		<u>\$28,125</u>
7. Number of Days of Violation:		<u></u>
8. Multi-day Penalty (Number of days X Line 6, Part II):		<u></u>
9. Economic Benefit of Noncompliance:		<u>- 0 -</u>

Justification:

10. Total (Lines 8 + 9, Part II):	<u>\$28,125</u>
11. Ability to Pay Adjustment:	<u></u>
Justification for Adjustment:	<u>- 0 -</u>
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):	<u>\$28,125</u>

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraph II. 2a. of ALJ Decision (page 23)
-submittal of a closure plan as described in 35 Ill. Adm. Code 725.210
within 30 days from service of the ALJ Decision.

POTENTIAL FOR HARM: MAJOR

Failure to meet this requirement does not pose direct harm to human health or the environment by itself. However, noncompliance has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Specifically, without an adequate closure plan closure of a facility may not be properly conducted. This may result in serious amounts of hazardous waste remaining on site and potential harm to the health of workers. The facility is also located in an urbanized area which poses potential harm to local residents. Such a delay in submitting a closure plan and adequately closing a facility causes hazardous waste to remain on-site longer and to increase the likelihood of exposure to humans and the environment.

In 1984, at least, a portion of the facility was rented to a new tenant even though drums of hazardous waste were still scattered throughout the facility. On October 27, 1987, U.S. EPA visited the facility to determine its general status and occupancy. The facility had not completed closure and a public coffeehouse/bookstore was being opened on the site.

EXTENT OF DEVIATION: MAJOR

A closure plan was not submitted within 30 days of the ALJ's decision, i.e., by May 13, 1986, as required by that Decision. It was submitted until October 14, 1987. The respondent has shown a long history of deliberate noncompliance in this matter over a period of years.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Sr., d/b/a Aero Plating WorksRegulation Violated: Paragraph II 2a. of ALJ Decision (submittal of a closure plan)

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: \$20,000 - \$25,000
 Penalty Amount Chosen: \$22,5000
 Justification for Penalty Amount Chosen: Midpoint
4. Per-Day Assessment: _____

Part II - Penalty Adjustments

- | | <u>Percentage Change*</u> | <u>Dollar Amount</u> |
|--|--|----------------------|
| 1. Good faith efforts to comply/lack of good faith: | _____ | _____ |
| 2. Degree of willfulness and/or negligence: | <u>+ 25%</u> | <u>\$5,625</u> |
| 3. History of Noncompliance: | _____ | _____ |
| 4. Other Unique Factors: | _____ | _____ |
| 5. Justification for Adjustments: | Both the September 10, 1984, Administrative Complaint and Compliance Order and the February 13, 1986, ALJ decision required submission of a closure plan within 30 days. However, one was not submitted until October 14, 1987, i.e., after the case had been referred to U.S. district court. | |
| 6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): | | <u>\$28,125</u> |
| 7. Number of Days of Violation: | | _____ |
| 8. Multi-day Penalty (Number of days X Line 6, Part II): | | _____ |
| 9. Economic Benefit of Noncompliance: | | <u>- 0 -</u> |
| Justification: | | |
| 10. Total (Lines 8 + 9, Part II): | | <u>\$28,125</u> |
| 11. Ability to Pay Adjustment: | | _____ |
| Justification for Adjustment: | | <u>- 0 -</u> |
| 12. Total Penalty Amount
(must not exceed \$25,000 per day of violation): | | <u>\$28,125</u> |

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraph II. 2a. of ALJ Decision (page 23)
-submittal of a closure plan as described in 35 Ill. Adm. Code 725.210
within 30 days from service of the ALJ Decision.

POTENTIAL FOR HARM: MAJOR

Failure to meet this requirement does not pose direct harm to human health or the environment by itself. However, noncompliance has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Specifically, without an adequate closure plan closure of a facility may not be properly conducted. This may result in serious amounts of hazardous waste remaining on site and potential harm to the health of workers. The facility is also located in an urbanized area which poses potential harm to local residents. Such a delay in submitting a closure plan and adequately closing a facility causes hazardous waste to remain on-site longer and to increase the likelihood of exposure to humans and the environment.

In 1984, at least, a portion of the facility was rented to a new tenant even though drums of hazardous waste were still scattered throughout the facility. On October 27, 1987, U.S. EPA visited the facility to determine its general status and occupancy. The facility had not completed closure and a public coffeehouse/bookstore was being opened on the site.

EXTENT OF DEVIATION: MAJOR

A closure plan was not submitted within 30 days of the ALJ's decision, i.e., by May 13, 1986, as required by that Decision. It was not submitted until October 14, 1987. The respondent has shown a long history of deliberate noncompliance in this matter over a period of years.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Jr., d/b/a Aero Plating WorksRegulation Violated: Paragraph II, 2b. and III of ALJ Decision (closure certification and proper handling of hazardous waste during closure)
Assessments for each violation should be determined on separate worksheets and totalled.Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
2. Extent of Deviation: MAJOR
3. Matrix Cell Range: \$20,000 - \$25,000
- Penalty Amount Chosen: \$22,500
- Justification for Penalty Amount Chosen: Midpoint
4. Per-Day Assessment: _____

Part II - Penalty Adjustments

- | | <u>Percentage Change*</u> | <u>Dollar Amount</u> |
|---|---|----------------------|
| 1. Good faith efforts to comply/lack of good faith: | _____ | _____ |
| 2. Degree of willfulness and/or negligence: | <u>+ 25%</u> | <u>\$5,625</u> |
| 3. History of Noncompliance: | _____ | _____ |
| 4. Other Unique Factors: | _____ | _____ |
| 5. Justification for Adjustments: | <u>No evidence of closure or the proper management of hazardous waste during closure has been submitted since the February 13, 1986, ALJ Decision</u> | |
| 6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II): | | <u>\$28,125</u> |
| 7. Number of Days of Violation: | | _____ |
| 8. Multi-day Penalty (Number of days X Line 6, Part II): | | <u>- 0 -</u> |
| 9. Economic Benefit of Noncompliance: | | _____ |
| Justification: | | |
| 10. Total (Lines 8 + 9, Part II): | | <u>\$28,125</u> |
| 11. Ability to Pay Adjustment: | | _____ |
| Justification for Adjustment: | | <u>- 0 -</u> |
| 12. Total Penalty Amount (must not exceed \$25,000 per day of violation): | | <u>\$28,125</u> |

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraphs II. 2b. and II. 3. of ALJ Decision (pages 23 & 24)

- closure of the facility according to an approved closure plan and submittal of a certification of closure as required by 35 Ill. Adm. Code 725.215.
- in closing the facility, hazardous waste will be handled in the manner prescribed by Illinois regulations: manifesting [35 Ill. Adm. Code 725.120(a)], packaging [35 Ill. Adm. Code 722.130], labelling [35 Ill. Adm. Code 722.132(b)], and transporter placards [35 Ill. Adm. Code 722.133].

POTENTIAL FOR HARM: MAJOR

Without proper packaging, labelling, marking and placarding of hazardous waste during the closure of a facility, there is a substantial likelihood of exposure to workers involved in the closure and to area residents from spills and accidents. Without manifesting and a certification of closure by the owner or operator and an independent registered professional engineer, there is a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Without manifesting the regulatory agencies do not know if the hazardous wastes removed during closure have been properly disposed. Without a closure certification, the regulatory agencies do not know if closure has been completed according to an approved closure plan.

-n independent engineer's

EXTENT OF DEVIATION: MAJOR

Despite the Administrative Law Judge's (ALJ) order to this effect, the respondent has failed to show any evidence of a proper closure of the facility or the proper handling of hazardous waste in any partial closure which may have taken place.

PENALTY ASSESSED THIS VIOLATION: \$28,125

Regulation Violated: Paragraph II, 2b and III of ALJ Decision (closure certification and proper handling of hazardous waste during closure)
Assessments for each violation should be determined on separate worksheets and totalled.

1. Potential for Harm:	<u>MAJOR</u>
2. Extent of Deviation:	<u>MAJOR</u>
3. Matrix Cell Range:	<u>\$20,000 - \$25,000</u>
Penalty Amount Chosen:	<u>\$22,500</u>
Justification for Penalty Amount Chosen:	Midpoint
4. Per-Day Assessment:	

	<u>Percentage Change*</u>	<u>Dollar Amount</u>
1. Good faith efforts to comply/lack of good faith:		
2. Degree of willfulness and/or negligence:	+ 25%	\$5,625
3. History of Noncompliance:		
4. Other Unique Factors:		
5. Justification for Adjustments:	No evidence of closure or the proper management of hazardous waste during closure has been submitted since the February 13, 1986, ALJ Decision	
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		\$28,125
7. Number of Days of Violation:		
8. Multi-day Penalty (Number of days X Line 6, Part II):		
9. Economic Benefit of Noncompliance:		- 0 -
Justification:		
10. Total (Lines 8 + 9, Part II):		\$28,125
1. Ability to Pay Adjustment:		
Justification for Adjustment:		- 0 -
2. Total Penalty Amount (must not exceed \$25,000 per day of violation):		\$28,125

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Paragraphs II. 2b. and II. 3. of ALJ Decision (pages 23 & 24)

- closure of the facility according to an approved closure plan and submittal of a certification of closure as required by 35 Ill. Adm. Code 725.215.
- in closing the facility, hazardous waste will be handled in the manner prescribed by Illinois regulations: manifesting [35 Ill. Adm. Code 725.120(a)], packaging [35 Ill. Adm. Code 722.130], labelling [35 Ill. Adm. Code 722.132(b)], and transporter placards [35 Ill. Adm. Code 722.133].

POTENTIAL FOR HARM: MAJOR

Without proper packaging, labelling, marking and placarding of hazardous waste during the closure of a facility, there is a substantial likelihood of exposure to workers involved in the closure and to area residents from spills and accidents. Without manifesting and a certification of closure by the owner or operator and an independent registered professional engineer, there is a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. Without manifesting, the regulatory agencies do not know if the hazardous wastes removed during closure have been properly disposed. Without a closure certification, the regulatory agencies do not know if closure has been completed according to an approved closure plan.

-n independent engineer's

EXTENT OF DEVIATION: MAJOR

Despite the Administrative Law Judge's (ALJ) order to this effect, the respondent has failed to show any evidence of a proper closure of the facility or the proper handling of hazardous waste in any partial closure which may have taken place.

PENALTY ASSESSED THIS VIOLATION: \$28,125

PENALTY COMPUTATION WORKSHEET

Company Name: Louis J. Maiorano, Jr., d/b/a Aero Plating Works
 Regulation Violated: Section 3007 of RCRA (information request by U.S. EPA)

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR
 2. Extent of Deviation: MAJOR
 3. Matrix Cell Range: \$20,000 - \$25,000
 Penalty Amount Chosen: \$22,500
 Justification for Penalty Amount Chosen: Midpoint
 4. Per-Day Assessment: _____

Part II - Penalty Adjustments

	<u>Percentage Change*</u>	<u>Dollar Amount</u>
1. Good faith efforts to comply/lack of good faith:	<u>+ 25%</u>	<u>\$5,625</u>
2. Degree of willfulness and/or negligence:	_____	_____
3. History of Noncompliance:	_____	_____
4. Other Unique Factors:	_____	_____
5. Justification for Adjustments:	The respondent has shown a strong lack of good faith in refusing to comply with the information request, and has a long history of not supplying this type of documentation.	
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		<u>\$28,125</u>
7. Number of Days of Violation:		_____
8. Multi-day Penalty (Number of days X Line 6, Part II):		_____
9. Economic Benefit of Noncompliance:		<u>- 0 -</u>
Justification:		
10. Total (Lines 8 + 9, Part II):		<u>\$28,125</u>
11. Ability to Pay Adjustment:		_____
Justification for Adjustment:		<u>- 0 -</u>
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):		<u>\$28,125</u>

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Section 3007 of RCRA (February 3, 1987, information request from U.S. EPA.

POTENTIAL FOR HARM: MAJOR

✓ Failure to answer this information request does not pose any direct harm to human health or the environment. However, it has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. If regulatory agencies cannot check their information or require an answer from facility managers where information is lacking, it ~~can be an impossible matter~~ ^{would} to accurately determine the compliance status of a facility.

On February 3, 1987, U.S. EPA sent Section 3007 Information Requests to each respondent which requested documentation that the hazardous waste had been shipped off-site, e.g., name and address of disposal facility, type of disposal, manifests, shipping documents, or other documents relating to the transportation and disposal of hazardous wastes. Without such information, U.S. EPA has no documentation that hazardous waste has been removed and disposed.

EXTENT OF DEVIATION: MAJOR

Neither respondent has responded to the February 3, 1987, information request.

✓ PENALTY ASSESSED THIS VIOLATION: \$28,125

Company Name: Louis J. Maiorano, Sr., d/b/a Aero Plating WorksRegulation Violated: Section 3007 of RCRA (information request by U.S. EPA)

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm: MAJOR

2. Extent of Deviation: MAJOR

3. Matrix Cell Range: \$20,000 - \$25,000

Penalty Amount Chosen: \$22,500

Justification for Penalty Amount Chosen: Midpoint

4. Per-Day Assessment: _____

Part II - Penalty Adjustments

	<u>Percentage Change*</u>	<u>Dollar Amount</u>
1. Good faith efforts to comply/lack of good faith:	<u>+ 25%</u>	<u>\$5,625</u>
2. Degree of willfulness and/or negligence:	_____	_____
3. History of Noncompliance:	_____	_____
4. Other Unique Factors:	_____	_____
5. Justification for Adjustments:	The respondent has shown a strong lack of good faith in refusing to comply with the information request, and has a long history of not supplying this type of documentation.	
6. Adjusted Per-day Penalty (Line 4, Part I + Lines 1-4, Part II):		<u>\$28,125</u>
7. Number of Days of Violation:		_____
8. Multi-day Penalty (Number of days X Line 6, Part II):		_____
9. Economic Benefit of Noncompliance:		<u>- 0 -</u>
Justification:		
10. Total (Lines 8 + 9, Part II):		<u>\$28,125</u>
11. Ability to Pay Adjustment:		<u>- 0 -</u>
Justification for Adjustment:		
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):		<u>\$28,125</u>

* Percentage adjustments are applied to the dollar amount calculated on Line 4, Part I.

RCRA PENALTY COMPUTATION - JUSTIFICATION

REGULATION(S) VIOLATED: Section 3007 of RCRA (February 3, 1987, information request from U.S. EPA

POTENTIAL FOR HARM: MAJOR

✓ Failure to answer this information request does not pose any direct harm to human health or the environment. However, it has a substantial adverse effect on the statutory and regulatory purposes and procedures for implementing the RCRA program. If regulatory agencies cannot check their information or require an answer from facility managers where information is lacking, it ~~can be an impossible matter~~ *would* to accurately determine the compliance status of a facility.

On February 3, 1987, U.S. EPA sent Section 3007 Information Requests to each respondent which requested documentation that the hazardous waste had been shipped off-site, e.g., name and address of disposal facility, type of disposal, manifests, shipping documents, or other documents relating to the transportation and disposal of hazardous wastes. Without such information, U.S. EPA has no documentation that hazardous waste has been removed and disposed.

EXTENT OF DEVIATION: MAJOR

Neither respondent has responded to the February 3, 1987, information request.

✓ PENALTY ASSESSED THIS VIOLATION: \$28, 125



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Maiorano Penalty

FROM: Charles McKinley *cmk*

TO: Ron Brown

I have received the latest version of the Maiorano Penalty computation worksheet. However, it appears to have two substantive deficiencies, which should be corrected before I send it out to Headquarters as the position of Region V and before I am prepared to have Bill Muno subject to cross examination concerning it.

1. It is prepared only as to Louis J. Maiorano, without specifying whether it refers to Jr. or Sr. It was my understanding that we would prepare worksheets as to each defendant. The ALJ concluded that Jr. was financially unable to pay a significant administrative fine, whereas Sr. was able. While I don't think we have sufficiently reliable evidence on financial ability, we may acquire it during discovery and so should be prepared to adjust the penalty which we seek as to each, accordingly.
2. There is no mention in the justification portion of the form of Rittenhouse's observation that the facility had been refurbished in preparation for opening as a coffeehouse/ bookstore. Such information is an important consideration concerning the potential for harm. Presumably, workmen have been in close proximity to any remaining waste, and but for our discovery of the situation and the court's recent order, members of the public were likely to be at risk, as well.

Would you please revise the forms to address these two concerns, have Bill Muno review them so that he can testify that they were prepared under his direction, and provide me with copies. If you have any questions, give me a call.

cc: T. Daggett
W. Muno